



**Roinn Cumarsáide,
Fuinnimh & Acmhainní Nádurtha**
Department of Communications,
Energy & Natural Resources

National Broadband Plan: State Led Intervention

Project Information Memorandum

22nd December 2015



European Union

European Regional
Development Fund

Contents

1	Definitions	7
2	Introduction	11
2.1	Background	11
2.2	Project Information Memorandum	11
2.3	Procurement Procedure	11
2.4	Variants	12
2.5	State Aid and ERDF funding	12
2.6	Acceptance	12
2.7	Background documents	13
3	Intervention objectives and scope	14
3.1	Background	14
3.2	Vision and Objectives	15
3.3	Intervention Area	18
3.4	Scope of the intervention	20
4	Lots and combined bids	24
4.1	Ownership models / lots	24
4.2	Intervention / lot areas	24
4.3	Lots	24
4.4	Eligibility for combined area bids	25
4.5	Evaluation of combined bids vs single bids	27
5	Intervention structure (lot areas and Ownership Models)	29
5.1	Intervention / Lot Areas	29
5.2	Ownership Models	31
5.3	Financing the intervention	34
5.4	Access to infrastructure	40



5.5	Access to spectrum	40
5.6	Ensuring delivery of planned commercial investments	45
5.7	Potential changes to the Intervention Area during procurement	46
5.8	Potential changes to the Intervention Area post Contract award	47
5.9	Strategic Environmental Assessment (SEA) and Appropriate Assessment (AA)	48
6	Intervention service requirements	50
6.1	Wholesale service specification	50
6.2	Wholesale pricing specification	56
6.3	Non-Discrimination	58
6.4	Retail service specification	60
6.5	Deployment specification	61
6.6	Demand stimulation	64
7	Intervention Contract and governance	65
7.1	Draft contract	65
7.2	Contract governance	65
7.3	Contract term, termination and end of term protections	67
7.4	Contract governance and the Ownership Options	69
7.5	Optional and Additional Services	69
8	Procurement Process	71
8.1	Introduction	71
8.2	Overview of procurement process	71
8.3	Indicative Timetable for Procurement	72
8.4	Briefing for Interested Bidders	73
8.5	Procurement Process	74
8.6	Refined Requirements	75
8.7	Disclosure	76
9	Queries at Pre-Qualification Stage	77



9.1	Queries	77
9.2	Confidential Queries	77
10	Bidder Composition	79
10.1	Financial Resources and Security	79
10.2	Reliance on Resources	79
10.3	Submissions by Consortia	80
10.4	Sub-contractors	80
10.5	Tax Clearance	81
10.6	Change in Bidder	81
10.7	Conflict of Interest / Participation in other Responses	82
11	Submission of Responses	84
11.1	Requirements	84
11.2	Response package	84
11.3	Completion of PQQ	85
11.4	Return of Completed PQQ	85
11.5	Full information	86
11.6	Change in circumstances	86
12	Evaluation of PQQ Responses	87
12.1	Introduction	87
12.2	Evaluation committee	87
12.3	Clarification	88
12.4	Verification	88
12.5	Pre-qualification evaluation	88
12.6	Weighting and scoring of Responses	90
12.7	Economic and financial standing selection criteria	91
12.8	Technical and professional capability selection criteria	96
12.9	Reassessment	108



13	Conditions of Procurement	109
13.1	Applicable Law	109
13.2	Compliance with Law and Regulation	109
13.3	Costs	109
13.4	Bidder Eligibility	109
13.5	Capacity to contract	110
13.6	Security	110
13.7	Warranty	110
13.8	The Department's rights	110
13.9	Canvassing	111
13.10	Conflict of Interest	111
13.11	Collusion	111
13.12	Errors	112
13.13	Compliant and Unqualified Responses	112
13.14	Confidentiality	112
13.15	Freedom of Information	113
13.16	Copyright	114
13.17	Disqualification	114
13.18	Publicity	114
13.19	Solicitation	114
13.20	Third Parties	114
13.21	Disclaimer	114
13.22	Legal obligations	116



Important Notice

The Department of Communications, Energy and Natural Resources (“**Department**” or “**DCENR**”) has prepared the contract notice, this Project Information Memorandum and the accompanying Pre-Qualification Questionnaire (together the “**Pre-Qualification Documents**”) for the sole purpose of inviting expressions of interest from potential Bidders for the National Broadband Intervention project. The information set out in the Pre-Qualification Documents is being made available on condition that it is only used in connection with this qualification exercise and for no other purpose whatsoever. It is provided as a guide only and does not purport to contain all the information that a Bidder may require in connection with this Contract. In no circumstances shall the Minister, Department, its advisers, consultants, contractors and/or agents incur any liability or responsibility arising out of or in respect of the issue of the Pre-Qualification Documents.

In particular, the information in this Project Information Memorandum is preliminary and indicative only and will be superseded by the information set out in the Invitation to Participate in Dialogue that is issued to the short listed Bidders and by the information shared with those short listed Bidders during the competitive dialogue process including the Final Tender documents. The information provided in the Pre-Qualification Documents is offered in good faith for the guidance of Bidders but no warranty or representation, express or implied, is given as to the accuracy or completeness of any of the information set out in the Pre-Qualification Documents or on which the Pre-Qualification Documents are based.

The Minister, Department and its advisers shall not under any circumstances whatsoever have any liability for the accuracy, adequacy or completeness of the Pre-Qualification Documents or for any other written or other communication made available during the course of the qualification process including, without limitation, for any loss, damage, cost or expense incurred or arising as a result of reliance on such information or communication. Where information in the Pre-Qualification Documents is cited from a third party source, such information has not been independently verified. Any summaries or descriptions of documents or contractual arrangements contained in any part of the Pre-Qualification Documents cannot at this stage be, and are not intended to be, comprehensive.

The Department reserves the right to amend the Pre-Qualification Documents, its requirements and any information contained herein at any time by notice, in writing, to the Bidders.

The Department reserves the right to take such steps as it considers appropriate, including (but not limited to):

- changing the basis of, or the procedures (including the timetable) relating to, the tender process;
- rejecting any, or all, of the applications/tenders;
- not inviting a Bidder or tenderer to proceed further;
- not furnishing a Bidder or tenderer with additional information; or
- abandoning the competition

Nothing in the Pre-Qualification Documents is, or may be relied upon as, a promise or representation as to the Department’s ultimate decision in relation to the award of the Contract(s) which are the subject of this competition, or as a representation of fact or promise as to the future. None of the information contained in the Pre-Qualification Documents shall impose any legal obligations on the Department or Minister.

The Minister, Department, its advisers, consultants, contractors and/or agents do not accept any responsibility for the legality, validity, effectiveness, adequacy or enforceability of any documentation executed, or which may be executed, in relation to the Project.

The Department / Minister shall not be obliged to appoint any of the Bidders to undertake the Project and reserves the right not to proceed with the award process and to withdraw from the process at any time. No contract to be entered into with a successful Bidder will contain any representation or warranty from the Department in respect of the Pre-Qualification Documents.



The Pre-Qualification Documents are being made available by the Department to Bidders on the terms set out in the Pre-Qualification Documents only. The Pre-Qualification Documents are not being distributed to the public nor have they been filed, registered or approved in any jurisdiction. Their possession or use in any manner contrary to any applicable law is expressly prohibited. Bidders shall inform themselves concerning, and shall observe, any applicable legal requirements.

In this Important Notice, references to the Pre-Qualification Documents includes all information contained in them, any accompanying documentation, and/or information and/or opinions made available during the pre-qualification period by or on behalf of the Department, its advisers, consultants, contractors, servants and/or agents in connection with the Pre-Qualification Documents or the Project including, without limitation, the information made available in response to any queries.

Each Bidder's downloading or acceptance of delivery of the Pre-Qualification Documents constitutes its agreement to, and acceptance of, the terms set forth in this Important Notice.



1 Definitions

For the purposes of this Procurement, the capitalised words and expressions that follow have the meanings hereby assigned to them unless the context specifically requires otherwise. It should also be noted that references to the singular include the plural and vice versa.

Bidder means the person or persons, firm or firms, or company or companies that have requested to be supplied with a copy of the PQQ or are invited to participate in the Procurement after pre-qualification, as the case may be;

Bidder Members includes:

- a) the Bidder;
- b) where the Bidder is a consortium, the members of the consortium and the Shareholders of the consortium (if different); and
- c) where the Bidder or a Bidder Member has relied on the resources of another entity (e.g. its parent company or a key subcontractor) in its PQQ response, that other entity (or entities) whose resources the Bidder or Bidder Member has relied upon (whether that be for the purposes of demonstrating its economic and financial standing or its technical and professional capability);

Combined Area Lot means, as the context so admits or requires, either or both Lot 1C and Lot 2C (which are lots in respect of the combined Southern Intervention Area and Northern Intervention Area);

Commercial Stimulus Model means the commercial stimulus (gap funding) model more particularly described in section 5.2;

Concession Model means the concession model more particularly described in section 5.2;

Confidential Information has the meaning given to it in section 13.12;

Consortium Members means, where the Bidder is a consortium, those persons, firms or companies that are considered to form part of the consortium (whether that be as Shareholders or otherwise) as set out in the Bidder's response to Question A.3 and A.4 of the PQQ. For the avoidance of doubt, a Consortium Member does not include subcontractors;

Contract means any contract or contracts awarded by the Minister to any Contractor pursuant to the terms and conditions agreed between the Minister and the Contractor;

Contract Notice means the contract notice published in the OJEU and eTenders in respect of this Procurement and Project;

Contractor means the entity with which the Minister will ultimately contract and may include (but is not limited to) a joint venture, single organisation or special purpose entity;

Department means the Department of Communications, Energy and Natural Resources;

Detailed Solution means the solution submitted by the remaining short listed Bidders in response to the Invitation to Submit Detailed Solutions document;

EoI means equivalence of inputs;

Final Tender means the final tender submitted by the remaining short listed Bidders in response to the Invitation to Submit Final Tenders document;

Governance Report means the governance report referred to in section 5.3.1;

High Speed Broadband Map 2020 means the High Speed Broadband Map 2020 described in section 3.3 (as that map is evolved from time to time in the manner contemplated by this PIM);



Invitation to Participate in Dialogue or ITPD means the initial invitation to participate in dialogue documents to be made available to short listed Bidders following their selection from the PQQ stage of the competitive dialogue process;

Invitation to Submit Detailed Solution or ISDS means the invitation for Bidders to submit Detailed Solutions following completion of the detailed dialogue phase;

Invitation to Submit Final Tenders or ISFT means the invitation to submit final tender documents issued to the Bidders following the completion of the dialogue phase;

Invitation to Submit Refined Detailed Solution or ISRDS means the invitation for Bidders to submit Refined Detailed Solutions following completion of the detailed dialogue phase and submission of Detailed Solutions;

Intervention Area means the intervention area described in section 5.1 of the PIM, comprising of both the Southern Intervention Area and the Northern Intervention Area, as the Intervention Area is evolved from time to time in the manner contemplated by this PIM (and references to the Intervention Area include, as the context so admits or requires, any part or parts of it or all of it);

Intervention Strategy has the meaning given to it in section 3.1;

Key Personnel means all of the persons identified by the Department as “Key Personnel” in the Invitation to Participate in Dialogue documentation or subsequent Procurement documents;

Lot 1A or Single Area Lot 1A means the lot for the Southern Intervention Area under the Commercial Stimulus Model;

Lot 1B or Single Area Lot 1B means the lot for the Northern Intervention Area under the Commercial Stimulus Model;

Lot 1C or Combined Area Lot 1C means the lot for the combined Southern Intervention Area and Northern Intervention Area under the Commercial Stimulus Model;

Lot 2A or Single Area Lot 2A means the lot for the Southern Intervention Area under the Concession Model;

Lot 2B or Single Area Lot 2B means the lot for the Northern Intervention Area under the Concession Model;

Lot 2C or Combined Area Lot 2C means the lot for the combined Southern Intervention Area and Northern Intervention Area under the Concession Model;

Lot Area means, as the context so admits or requires, any one or more of Lot Area A, Lot Area B and Lot Area C;

Lot Area A means the Southern Intervention Area;

Lot Area B means the Northern Intervention Area;

Lot Area C means the entire Intervention Area comprising the combined Southern Intervention Area and Northern Intervention Area;

Lots means the lots that comprise this Procurement, namely Lot 1A, Lot 1B, Lot 1C, Lot 2A, Lot 2B and Lot 2C and reference to Lots includes, as the context so admits or requires, any, some or all of them (and the term “**Lot**” shall be interpreted as referring to any one of these Lots);

Minimum NGA Services means, as the context so admits or requires, either or both of the Minimum Standard NGA Service and the Minimum Non-Standard NGA Service;

Minimum Non-Standard NGA Service has the meaning given to it in section 3.4.4;

Minimum Non-Standard NGA Service Requirements has the meaning given to it in section 3.4.4;

Minimum Standard NGA Service means the NGA service as defined in section 6.1.3 of this PIM and further described in section 5.3 of the Technical Report, subject to such specifications being further defined, refined and changed during the Procurement process;



Minimum Standard NGA Service Percentage has the meaning given to it in section 3.4.4;

Minister means the Minister for Communications, Energy and Natural Resources;

NBP or **National Broadband Plan** means the 2012 National Broadband Plan;

NGA means next generation access;

NGA Service Determination has the meaning given to it in section 3.4.4;

Northern Intervention Area means that part of the Intervention Area (as it evolves from time to time in the manner contemplated by this PIM) that is identified in section 5.1 as the Northern Intervention Area (and references to the Northern Intervention Area include, as the context so admits or requires, any part or parts of it or all of it);

Optional Services has the meaning given to it in section 7.5.1;

OJEU means the Official Journal of the European Union;

Ownership Model means, as the context so admits or requires, either or both of the Commercial Stimulus Model and the Concession Model;

Ownership Model Determination has the meaning given to it in section 5.2;

Ownership Options means the ownership options examined by the Ownership Report;

Ownership Report means the ownership report referred to in section 3.1;

Preferred Bidder means the Bidder selected or provisionally selected as providing the most economically advantageous tender;

Pre-Qualification Document(s) means the Contract Notice together with the Project Information Memorandum and the Pre-Qualification Questionnaire when read in conjunction with the Project Information Memorandum;

Pre-Qualification Minimum Requirements means the eligibility and other pre-qualification minimum requirements set out in sections 12.5.2 and 12.5.3 of this PIM;

Pre-Qualification Questionnaire or **PQQ** means the questionnaire that is issued by the Department to pre-qualify the Bidders who will receive the Invitation to Participate in Dialogue document (together with the Appendices and any written clarifications issued by the Department in respect of the PQQ);

Procurement means this procurement which includes the entire competitive dialogue process;

Project means the project for the appointment of a Contractor(s) for the financing, development, construction, operation, maintenance and exploitation of the national broadband intervention (NBI) Project (including the provision of next generation access (NGA) wholesale services for premises that are unlikely to be able to access such services through commercial investment alone) and other elements of the project the subject of this Procurement which are described in the Pre-Qualification Documents;

Project Information Memorandum or **PIM** means this Project Information Memorandum (together with the Appendices and any written clarifications issued by the Department in respect of this Project Information Memorandum);

Refined Detailed Solution means the solution submitted by the remaining short listed Bidders in response to the Invitation to Submit Refined Detailed Solutions document;

Relevant Persons has the meaning given to it in section 13.12;

Response or **PQQ Response** means a response submitted by a Bidder in response to the contract notice and the Pre-Qualification Documents which includes the completed PQQ and supporting documents including any clarifications requested from, and submitted by, the Bidder;

RSP means retail service providers;



Shareholders means those persons, firms or companies who will be shareholders in the Bidder, and for the avoidance of a doubt, a Shareholder may also be a Bidder Member;

Southern Intervention Area means that part of the Intervention Area (as it evolves from time to time in the manner contemplated by this PIM) that is identified in section 5.1 as the Southern Intervention Area (and references to the Southern Intervention Area include, as the context so admits or requires, any part or parts of it or all of it);

Single Area Lot means, as the context so admits or requires, any, some or all of Lot 1A, Lot 1B, Lot 2A and Lot 2B (which are lots in respect of just one of either the Southern Intervention Area or Northern Intervention Area);

Solutions means the solutions submitted by Bidders in response to the Invitation to Submit Detailed Solutions and any subsequent solutions submitted before submission of the Final Tenders (including the Detailed Solution and, if applicable, Refined Detailed Solution);

State Aid Guidelines means the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01);

Subsidy Parameters Determination has the meaning given to it in section 5.3.3.

Technical Report means the technical report referred to in section 3.1; and

WSP means third-party wholesale service providers.



2 Introduction

2.1 Background

The Department of Communications, Energy and Natural Resources (“**Department**” or “**DCENR**”) has published a contract notice in the Official Journal of the European Union (the “**OJEU**”), and the etenders.gov.ie (“**eTenders**”) website, regarding a proposed contract to appoint a Contractor(s) for the financing, development, construction, operation, maintenance and exploitation of the national broadband intervention (“**NBI**”) Project (including the provision of next generation access (NGA) wholesale services for premises that are unlikely to be able to access such services through commercial investment alone) (“**the Project**”) described within this Project Information Memorandum (the “**PIM**”).

A Pre-Qualification Questionnaire (the “**PQQ**”) accompanies this PIM.

The Pre-Qualification Documents aim to inform potential Bidders, in an outline format, of the currently envisaged range of services and products that constitute some of the main contractual requirements for a Contractor. In addition, the Pre-Qualification Documents provide interested parties with an initial overview of the currently envisaged pre-qualifying and competitive dialogue process and sets out the conditions of Procurement.

2.2 Project Information Memorandum

This PIM, together with the other Pre-Qualification Documents, aims to provide interested parties with an overview of the Project (as currently envisaged) so that interested parties can:

- understand the background to the Project;
- understand the Procurement process being employed for the award of the Contract(s), the estimated timeframes involved and the tasks to be carried out by those Bidders participating in the Procurement process; and
- evaluate whether they wish to participate in the Procurement.

The PIM presents the Department’s current requirements of the Project and indicates how the Department currently expects to run the Procurement. The Department reserves the right to refine, clarify or otherwise amend any of this during the Procurement process and, in particular:

- in the Invitation to Participate in Dialogue (“**ITPD**”) that is issued to prequalified Bidders at the start of the dialogue stage; and
- subsequently during the dialogue process when the Department will discuss and clarify its requirement with Bidders.

All of the statistics presented in the PIM are indicative and are subject to change during the Procurement process.

2.3 Procurement Procedure

The Contract(s) that are the subject of this Procurement have been designated as a “service concession” as defined in the Public Procurement Directive 2004/18/EC and the European Communities (Award of Public Authorities’ Contracts) Regulations 2006. Consequently, that legislation does not apply to this Procurement in accordance with Article 17 of that directive and Regulation 14 of those regulations.



The competitive dialogue procedure is being followed for the purposes of this Procurement.¹

There are three stages to this:

- **Stage 1 - pre-qualification:** this stage is governed by the Pre-Qualification Documents.
- **Stage 2 – dialogue:** this stage will be governed by the ITPD (and other documents related to the dialogue stage such as the ISDS) which will be issued to the shortlisted Bidders following the pre-qualification stage.
- **Stage 3 – final tender:** this stage will be governed by the ISFT which will be issued to Bidders remaining in the Procurement at the point the dialogue stage is closed.

Interested Bidders are requested to complete the Pre-Qualification Questionnaire (the “**PQQ**”) accompanying this PIM and to return it in accordance with the instructions set out in the Pre-Qualification Documents by the date specified in section 7.3.

2.4 Variants

It is currently envisaged that variant Solutions or Final Tenders will not be permitted, though this could change. The exact position will be confirmed during the dialogue stage.

2.5 State Aid and ERDF funding²

Given the nature of the Project, the Department are taking steps to ensure that there is no inappropriate State Aid.

Bidders should be aware that the award of the Contract is subject to a favourable State Aid decision being obtained from the European Commission.

A State Aid Compliance Report was consulted upon previously. Further details about this report are set out in section 3.1 below.

In addition, this Project involves ERDF (European Regional Development Fund) funding. The Procurement and Contract is accordingly subject to any requirements arising under ERDF funding conditions. This includes audits as well as a requirement for eligible expenditure for ERDF funding to be incurred and drawdown by specific timelines. The specific requirements relating to ERDF funding will be set out for the short listed bidders in the ITPD.

2.6 Acceptance

Each Bidder (including, without limitation, all of its Bidder Members) irrevocably and unconditionally accepts, and agrees to, the terms and conditions of the Pre-Qualification Documents and the conditions of this Procurement by downloading or receiving the Pre-Qualification Documents, by

¹ However, the Department reserves the right to refine or change aspects of the competitive dialogue procedure such as (by way of non-exhaustive example) by introducing a right to negotiate during the Final Tender and/or Preferred Bidder stages. However, the Procurement shall, even with such refinements or changes, continue to be conducted in line with the spirit and the principles of the Public Sector Directive 2004/18/EC.

It is permitted to deviate from the exact form of the competitive dialogue under the legislation as the Public Procurement Directive 2004/18/EC and the European Communities (Award of Public Authorities' Contracts) Regulations 2006 do not apply to this Procurement. The Procurement documents for the next stages of this Procurement will outline in more detail the procedure being followed.

All references to the competitive dialogue in the Pre-Qualification Documents should be construed accordingly.

² The Department reserves the right to change its requirements in respect of the Project and Contract as specified in the Procurement documents (including the Pre-Qualification Documents, ITPD, ISDS or ISFT) in order to comply with any conditions, recommendations or requirements made by the European Commission in connection with any State Aid decision or as a condition of ERDF funding.



submitting or participating in a Response and/or by participating in this Procurement, and are legally bound by them.

Bidders are responsible for communicating the terms of the Pre-Qualification Documents (including clarifications) to their Bidder Members and other persons involved in their Response.

Bidders are required to complete the compliance forms and declarations contained in Annex A of the PQQ and to submit these as part of their Response.

2.7 Background documents

There are various background documents referred to in this PIM (including, in particular, the various reports identified in section 3.3.1 such as the Intervention Strategy, for instance) (the “**Background Documents**”).

All the Background Documents are provided for background information only and outline the background in relation to this Procurement and the decisions made leading up to the launch of this Procurement process.

In many cases, the Background Documents may provide additional information in relation to specific aspects of the Project which are discussed in this PIM. Whilst Bidders can use this information to inform their understanding of the background leading up to launch of the Project and Procurement, Bidder should note that the Pre-Qualification Documents set out the basis of this Procurement and a broad indicative outline of the Project and Department's requirements (and which will be refined and changed in accordance with the competitive dialogue procedure). Consequently, the Department is not bound by what is stated in the Background Documents and may, at its discretion, take a different approach to any aspect of the Project or Procurement from that set out in the Background Documents where this is considered appropriate following more detailed engagement with Bidders during the dialogue. However, the Background Documents are relevant and do provide relevant additional background information. Consequently, the Department may (without being obliged to) have regard to them during the Procurement and use them to inform its approach to the Procurement and its more detailed statement and refinement of its requirements for the Project.

If there is any discrepancy, conflict or inconsistency between what is stated in the Background Documents and this PIM, Bidders may ask for clarification as to the position for the purposes of the Procurement and Project in accordance with section 9 of this PIM. The Department will then clarify the position in such manner as it considers appropriate, at its absolute discretion.



3 Intervention objectives and scope

3.1 Background

The objective of the Project is to ensure that every citizen and business in Ireland, regardless of location, has access to high speed broadband.

The 2012 National Broadband Plan (the “**National Broadband Plan**”) outlined the Department’s commitment to deliver high speed broadband to every citizen and business in Ireland, regardless of location. It reflected Department and European objectives, such as the EU Digital Agenda, to deliver new opportunities for jobs, growth and social inclusion. At that time, industry envisaged that industry would provide 1 million premises with high speed broadband. The Department, for its part, committed to facilitating investment with policy and regulatory supports, and to fund a state-intervention to provide high speed broadband to the balance of 1.3m premises in the State.

A key principle of the National Broadband Plan was to support and stimulate commercial investment through policy and regulatory measures. This collaboration with industry was informed by the Next Generation Broadband Task Force in May 2012 where industry advised the Department on measures that could help accelerate investment.

Commercial investment since then has considerably exceeded expectations. In 2012, industry committed to providing high speed broadband to 1 million addresses in Ireland by 2015, with top speeds ranging from 100Mbps for cable and 70Mbps for fibre based services. Currently, cable is delivering speeds of up to 240Mbps to over 700,000 addresses and fibre based services of up to 100Mbps are available to 1.2m addresses. This commercial activity far exceeds what was envisaged in 2012 and represents a significant step-change in the quality of broadband connectivity now available to many business and residential customers. These industry investments are transforming the broadband experience of millions of Irish citizens.

The High Speed Broadband Map 2020 (published on 22 December 2015) shows the extent of industry commitments to the end of 2016 and indicates that 70% of addresses in Ireland will have access to high speed broadband within that timescale. The balance of 30%, approximately 757,000 addresses, represents the target for the proposed State intervention.³

A second key principle of the National Broadband Plan is a recognition that industry investment will not extend to all parts of Ireland. Ireland’s widely dispersed population and topography presents a very specific challenge in delivering universal quality high speed broadband. With only c.67 people per km, Ireland has one of the lowest population densities in Europe. Some counties in Ireland have a population density as low as 19 people per km. This low population density, coupled with a thinly distributed rural population makes the deployment of a high speed broadband network infrastructure difficult and costly on a commercial basis.

The Department has, therefore, committed to the national broadband intervention which will bring high speed broadband to those areas where there are no concrete plans for industry investment by

³ This figure is based upon the High Speed Broadband Map 2020. As mentioned above, the objective of the Project is to ensure that every citizen and business in Ireland, regardless of location, has access to high speed broadband. Consequently, the actual State intervention pursuant to this Procurement and the Contract may (without any obligation to do so), in principle, be extended to cover any area or address where industry did not follow through on a commitment made.



2020.⁴ To inform the intervention the Department engaged specialist advice to inform on a number of key issues, namely:

- The Broadband Intervention Strategy (“**Intervention Strategy**”) prepared by PwC, detailing the overall intervention strategy in detail including objectives, principles, scope and procurement strategy.
- A Cost Benefit Analysis prepared by PwC, examining the likely impact of the intervention on the Intervention Area in particular and Ireland in general.
- A State Aid Compliance Report prepared by PwC, reviewing the proposed structure of the intervention against EU guidelines for the application of State Aid rules in relation to the rapid deployment of broadband networks.
- A Technical Report prepared by Analysys Mason, providing its views on the technical requirements of the intervention.
- An Ownership Report prepared by KPMG, examining a range of Ownership Options for the infrastructure created under the intervention and recommendations.
- A Financial Appraisal Report prepared by KPMG, detailing the likely financial impact on the Department of the Ownership Options proposed for the private sector and the Department.
- A Governance Report prepared by KPMG, detailing the governance regime that will apply to the intervention for the duration of the contract.
- A Funding Report prepared by KPMG, detailing funding options available to the Department and the private sector and the implications of these options.

A number of the above reports were made available for consultation in redacted form. A wide range of responses were received from citizens, professional bodies, other Department bodies and industry. The reports have been updated, where appropriate, to reflect the views of these bodies. These updated reports have been made available for review at the following web address:

<http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Connecting-Communities.aspx>

The conclusions and recommendation of these reports have been used to inform the Pre-Qualification Documents and to provide the basis for this Procurement.

3.2 Vision and Objectives

The Government recognises that quality high speed broadband is essential for today’s economy and society in this transformational digital age. The provision of high speed broadband enables citizens, businesses and institutions to access information, services and opportunities that would otherwise be out of reach. The NBP reflects Government objectives to deliver new opportunities for jobs, growth and social inclusion. Furthermore, it aims to underpin and support wider public policy objectives and initiatives both nationally and within the European context.

This Procurement supports the vision of the NBP, and the State led intervention under the Project, to connect all our communities by dealing definitively with the broadband connectivity challenge in rural areas. This will be achieved by delivering high speed broadband to all premises that will not be able to access such services through commercial investment alone.

⁴ As mentioned above, the objective of the Project is to ensure that every citizen and business in Ireland, regardless of location, has access to high speed broadband. Consequently, the actual State intervention pursuant to this Procurement and the Contract may (without any obligation to do so), in principle, be extended to cover any area or address where industry did not follow through on a commitment made.



This vision is informed by the fact that in Ireland, the digital economy

- represents 5% of GDP and is anticipated to be some 10% of GDP by 2020; and
- employs almost 100,000 people directly and indirectly.

Traditional industries such as farming and retail are increasingly relying on technology to compete nationally and globally.

Broadband is also essential to the delivery of internationally traded services. The Economic and Social Research Institute (ESRI) predicts that over 70% of Irish exports will be traded services by 2025. Quality broadband allows enterprises and workers more flexibility in terms of working patterns. The efficient delivery of public services including education, healthcare and central and local government services is increasingly reliant on digital platforms. In addition, social and leisure activities are also progressively more dependent on ICT.

The Government's ambition is that 100% of premises will have access to high speed broadband, and Bidders will be asked to achieve this at the lowest cost to the State. The intervention aims to ensure that there will be no need for any further State intervention in the provision of high speed broadband in Ireland.

Through delivering this vision, Ireland will be a leader in the provision of ubiquitous high speed broadband. This, in turn, will open up opportunities locally, nationally and internationally. The implications for Ireland of the intervention are likely to be wide ranging. These will include positive impacts on job creation, improved business productivity, faster deployment and take-up of new services and increased competition in the provision of high speed broadband services.

The Intervention Strategy sets out a number of objectives and related sub-objectives that the Project is expected to deliver. These include:

Table 3.1: Objectives

Objective	Sub-objectives
Develop intervention strategy for areas commercial operators will not deliver high speed broadband.	Deliver intervention as soon as possible to ensure a national high speed broadband network for Ireland.
Provide high quality and reliable broadband services.	Every home / business to have access to high speed broadband with a choice of service providers. Ensure network can meet current and future data demand.
Value for money.	Design economically advantageous procurement strategy. Maximise re-use of existing infrastructure. Incentivise additional commercial investment.
Underpin Government policy on economic recovery and jobs.	Stimulate retention/growth in jobs, enable farming, e-health, trading online, tourism, savings for consumers etc.

Within the context of these objectives there are a number of principles that have been identified by the Department which inform the intervention strategy to be adopted for the Project. These principles include:

- **One-off intervention with target of achieving 100% coverage** - to deliver high speed broadband to all premises that will not be able to access such services through commercial investment alone.
- **Step change in services** - to conclusively address connectivity deficits across Ireland by setting down minimum speeds and delivering an infrastructure that is capable of meeting current and future demands for bandwidth.



- **Open, competitive market** - to ensure that services are affordable, competitive and on a par with those available in commercial areas, by delivering a wholesale service that is open to all retailers, with benchmarked and transparent pricing and conditions for access.
- **Technology neutral procurement** - to ensure value for money and compliance with EU State Aid Guidelines through a technology neutral procurement process that attracts multiple bidders over competing platforms.
- **Cost effective deployment** - to ensure that the most efficient and cost effective network is built within the shortest possible timeframe, by building on and integrating with commercial operators' existing networks.
- **Reliable, affordable and future proofed services** - to ensure that quality and affordable services are continuously provided through a long term contract with stringent governance measures.



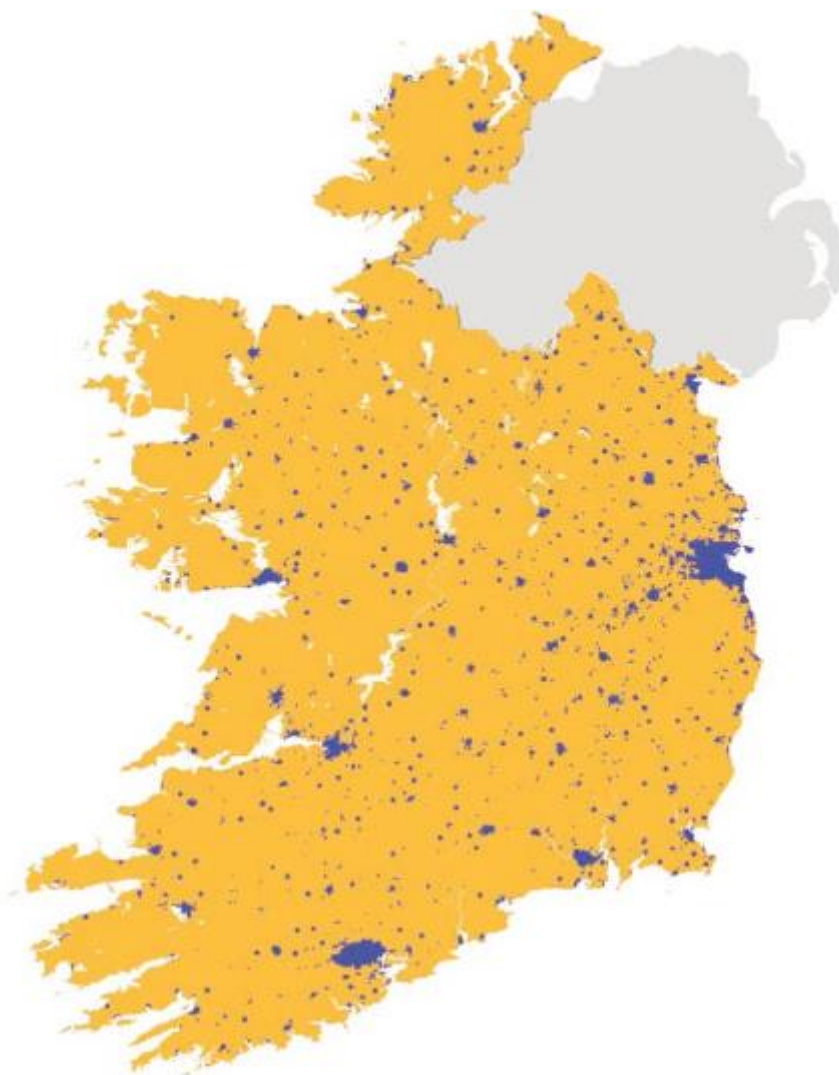
3.3 Intervention Area

An important element of developing the Intervention Strategy has been to clearly establish the areas where the State needs to intervene (i.e. those areas where commercial investment is unlikely to occur in the foreseeable future). This is a requirement under the European State Aid Guidelines (in relation to the rapid deployment of broadband networks) for all Member States to thoroughly evaluate any commercial plans so as to ensure any State Aid is confined to those areas where commercial investment is unlikely to occur in the foreseeable future.

The planned period for the rollout of the State intervention is 2016 to 2020.⁵

The Department has assessed future next generation access (NGA) investment plans of commercial operators to establish whether those operators have concrete plans to roll out NGA services by 2020. This process has resulted in the establishment of a High Speed Broadband Map 2020 which is presented diagrammatically below.

Figure 3.1: High Speed Broadband Map 2020



The High Speed Broadband Map 2020 has also been published at the following address:

⁵ The exact rollout period will be discussed with Bidders during the dialogue stage.

<http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Connecting-Communities.aspx>

In developing the High Speed Broadband Map 2020, the Department has engaged with operators since 2013 to identify those areas where there are concrete plans to roll out high speed broadband on a commercial basis. Areas where operators have demonstrated to the Department's satisfaction that there are concrete plans to roll out high speed broadband on a commercial basis will be excluded from the proposed State intervention.⁶

Over the past eighteen months the Department has assessed the financial, technical and deployment details of the investment plans to assess their credibility, consistent with the State Aid Guidelines.

In order to conclude whether an operator's business plan is credible or not (or credible to the extent that the Department agrees to accept such a plan on the basis of the available information) and for which premises it is or is not credible, three main assessment criteria have been used:

- **Technical criteria** - used to establish whether the planned solution is NGA and whether the solution is sufficiently reliable to consistently deliver NGA services i.e. the architecture and configuration of the broadband network meets the NGA standard ("what");
- **Deployment criteria** – used to evaluate whether the proposed roll-out plan is credible ("when and where") and that the resource plan to deliver the plan is credible ("how"); and
- **Financial criteria** - used to evaluate whether the proposed investment programme is underpinned by a sound business plan showing that a commercial return on the investment can be realised and that the funding/financing arrangements are sufficiently secured for the investment period to 2020.

In this context, it should be noted that even where an operator's business plan in respect of its investment plans are considered credible from a financial, technical and deployment perspective, given the timeframe involved in any roll out, there remains a real risk that such plans will not materialise (in full or in part). If an operator's commercial plans are not implemented fully and in a timely manner, this would undermine the Government's policy objective of delivering high speed broadband to every citizen and business in Ireland.

Accordingly, as a condition of an operator's *plans* being accepted on the High Speed Broadband Map 2020, the Department has considered it necessary to require such an operator to enter into a binding commitment with respect to its future plans. As part of this commitment, the operator must undertake to deliver their commercial plans by agreed milestones and to report to the Department regularly on deployment progress. The same conditions will apply to any future commercial plans that may be announced.

Operator plans were reviewed against these criteria and the aforementioned condition, and the Department's overall conclusion was that it did not agree to accept any of the plans based on the information provided by operators.

Accordingly, the High Speed Broadband Map 2020 (below) shows that an estimated 757,489 premises⁷ may not have access to high speed broadband by 2020. Currently, these 757,489 premises are, therefore, included in the Intervention Area that the Department expects to be covered by the State intervention, as shown on the map above.

Bidders should note that both the Intervention Area and the number of premises within the Intervention Area may (but without an obligation to do so) be changed by the Department during the Procurement and over the term of the Contract in order to meet the stated Project objective (i.e. to

⁶ As mentioned above, the objective of the Project is to ensure that every citizen and business in Ireland, regardless of location, has access to high speed broadband. Consequently, the actual State intervention pursuant to this Procurement and the Contract may (without any obligation to do so), in principle, be extended to cover any area or address where industry did not follow through on a commitment made.

⁷ Based on Geo Directory 2014.



ensure that every citizen and business in Ireland, regardless of location, has access to high speed broadband).

The Department makes no guarantees in respect of the size of the Intervention Area or the number of residences within it. The estimated number of premises in the Intervention Area may be updated (up or down) during the Procurement to reflect new information made available in the Geo Directory for 2015 and 2016.

Currently, the profile⁸ of the Intervention Area that will be addressed by the State intervention (and any commercial investments that may be forthcoming and validated by the Department) is as follows:

- 96% of national land mass;
- 100,000km of road network;
- Over 757,000 postal addresses;
- 1.8m citizens (38% of national population);
- 688,000 of active labour force (38% of national total);
- 214,000 white collar employment (34% of national total);
- 89% of farm employment (139,000 farmers nationally);
- 80,266 farms (94% of national total of farms);
- 63,440 non-farm businesses (pubs/shops/doctors etc.);
- 62,226 SMEs, primarily micro;
- 1,522 schools (40% of total); and
- 601 business parks (7% of total).

3.4 Scope of the intervention

3.4.1 Wholesale next generation access services

The regulatory approach adopted by the European Commission is that the intervention should, in the first instance, focus on addressing market failure in the wholesale market. Once this has been done, competition in retail markets tends to evolve naturally.

Following this rationale, the national broadband intervention is for the provision of a wholesale next generation access (NGA) network and services, as described in section 6 of this PIM. The intervention will, therefore, allow retail service providers to obtain access to network infrastructure at the wholesale level, enabling them to compete with each other, on a level playing field, in supplying retail services to end users in the Intervention Area.

This approach should allow for effective competition at the retail level and is, therefore, expected to deliver the benefits of competition which include – but are not limited to – lower prices, better service quality and product innovation.

3.4.2 Backhaul and access networks

Electronic communications (telecoms) networks can be thought of as consisting of the two following elements:

- **Backhaul network** – made up of high capacity connections between the parts of the network that direct and route the traffic over the network; and

⁸ Statistics are subject to change during the Procurement



- **Access network** – made up of the ‘last mile’ that connects individual premises or groups of premises to the nearest point from where the backhaul network is available. For the avoidance of doubt, this includes connections to the individual premise.

For the reasons described in the Intervention Strategy, the scope of this intervention covers both backhaul and access networks, thereby enabling the policy objective of delivering, in a single intervention, high speed broadband services to all end users in the Intervention Area to be met.

3.4.3 Target of 100% of premises in the Intervention Area

As described in section 3.2 above, it is an objective of the national broadband intervention to ensure that every home / business in Ireland has access to high speed broadband. This objective is supported by two key principles which underpin the Department’s requirements for the intervention and which will be incorporated into the Contract(s). These two key principles are:

- **100% coverage** - to deliver high speed broadband to all premises that will not be able to access such services through commercial investment alone. This means providing access to high speed broadband services to every one (i.e. 100%) of the premises (currently 757,489) in the Intervention Area; and
- **Step change in services** - to conclusively address connectivity deficits across Ireland by setting down minimum speeds and delivering an infrastructure that is capable of meeting current and future demands for bandwidth. This means providing at least a step change in the broadband services available to every one of the premises (currently 757,489) in the Intervention Area.

The Minimum NGA Service that the intervention is intended to deliver for premises in the Intervention Area is described in section 6 of this PIM.

3.4.4 Highest cost premises

As explained in section 3.7 of the Intervention Strategy, the economics of high speed broadband provision means that there is likely to be a proportion of premises for which the cost of provision will be sharply higher than for the vast majority of other premises. Whilst the aspiration of the Intervention Strategy is ubiquitous availability of the same Minimum Standard NGA Service to all premises in the Intervention Area, the Strategy recognises that the economics of achieving this aspiration may result in an unacceptably high, unaffordable subsidy requirement.

In order to address this affordability risk, the Department is adopting the following approach to addressing the highest cost premises in the Procurement process:

- At the Detailed Solutions stage, Bidders will be required to submit details of their subsidy proposals for delivering the Minimum Standard NGA Service to all premises in the Intervention Area, together with a subsidy curve that indicates the amount by which the subsidy requirement would reduce for every 1% (or other specified %) reduction in the number of premises receiving the Minimum Standard NGA Service.
- On the basis of this information, Government (as distinct from the Department) will determine for the Final Tender⁹ stage (taking account, among other things, of the profile of the subsidy curve, the increase in the subsidy amount per premise passed / connected at key points within the curve and other relevant factors such as Government budget and value for money considerations at that time):

⁹ This could alternatively (or in addition) be adopted at an earlier stage in the Procurement, such as at a Refined Detailed Solution stage if such a stage is introduced. In this case, whether achievement of these requirements is mandatory or not (at the Refined Detailed Solutions stage, as distinct from Final Tender stage) will be made clear at that time. If this introduced prior to the Final Tender stage, the Department reserves the right (but is not obliged to) for the NGA Service Determination to be dialogued with Bidders and revisited and revised by Government for the Final Tender stage in the manner outlined above.



- The minimum percentage of premises in the Intervention Area that are to receive at least the Minimum Standard NGA Service (“**Minimum Standard NGA Service Percentage**”); and
- The minimum service requirements for those premises in the Intervention Area that will not receive at least the Minimum Standard NGA Service but will still represent a “step change” in service to that provided commercially in that area (“**Minimum Non-Standard NGA Service Requirements**”).

This is referred to as the “**NGA Service Determination**”. The resulting requirements will be disclosed to Bidders remaining in the Procurement at that time.

- The Final Tenders submitted by Bidders must at least achieve the Minimum Standard NGA Service Percentage and Minimum Non-Standard NGA Service Requirements set by Government for the Final Tender stage. Achievement of these requirements at the Final Tender stage will be a mandatory requirement. If it is not met, the relevant Final Tender will be rejected.
- The Preferred Bidder(s) will be contractually obligated to deliver the commitments made in its Final Tender(s).

The Government’s NGA Service Determination with respect to the Minimum Standard NGA Service Percentage and Minimum Non-Standard NGA Requirements for the Final Tender (or, if applicable, earlier) stage will be made on an independent, non-discriminatory basis. Any individual:

- directly involved in the evaluation, dialogue or running of the Procurement on behalf of the Department; or
- who has been provided by the Department with a copy of, or access to, the Detailed Solution (or, if applicable, Refined Detailed Solution) of a Bidder or any other Bidder submissions during the Procurement,

will not make the NGA Service Determination but may be involved in collating information, conducting analysis, preparing reports and conducting briefings for the individual (or individuals) who will make the NGA Service Determination. The individual (or individuals) who will make the NGA Service Determination will not be given by the Department the subsidy curve submitted by each Bidder, but will instead be provided by the Department with either an anonymised graph that shows all of the subsidy curves together or alternatively anonymised details of the broad profile of the subsidy curves submitted by Bidders on a non-attributable basis (i.e. so that they don’t know what each named Bidder specifically proposed). This is so that it can clearly be shown that the NGA Service Determination was made on an independent, non-discriminatory basis.

At this stage, based on the network cost modelling that has been undertaken for the Department, it is anticipated that the percentage of premises in the Intervention Area that may not receive at least the Minimum Standard NGA Service is between 1% and 3%.¹⁰

3.4.5 New premises

The national broadband intervention is intended to be a one-off intervention, which addresses the high speed broadband needs of all premises in the Intervention Area over the next 25 years. For this reason, it will be a requirement of the Procurement that the Contractor’s solution addresses (with respect to the Intervention Area at that time) both:

- **Existing premises** – consisting of all of the premises within the Intervention Area as at the date the Contract is awarded; and
- **New premises** – consisting of all of the premises built in the Intervention Area over the 25 year term of the Contract that are not served by a commercial NGA deployment (i.e. a premise that cannot get NGA from another operator).

¹⁰ These are indicative figures only based upon current available information. They are in no way a limiting factor and the range could be smaller or bigger than this (even by a large amount, though this is not anticipated at this point).



The Contractor will, therefore, be required under the Contract to provide high speed broadband services, on request, to all new premises built within the Intervention Area that are not served by a commercial NGA deployment, in accordance with the requirements on charges and connection timeframes described in section 6 of this PIM.



4 Lots and combined bids

4.1 Ownership models / lots

There are two possible Ownership Models at this stage:

- Ownership Model 1: Commercial Stimulus Model¹¹
- Ownership Model 2: Concession Model

These Ownership Models are described in more detail in section 5.2.

Bidders can submit a PQQ Response for either or both of these Ownership Models. However, Bidders should note that the Department will drop one of these Ownership Models at the end of the pre-qualification stage (but prior to commencement of the dialogue stage). The way this will be done is explained in more detail in section 5.2.

4.2 Intervention / lot areas

The Intervention Area is split into two geographic areas:

- Lot Area A: Southern Intervention Area
- Lot Area B: Northern Intervention Area

These two Lot Areas are described in more detail in section 5.1.

Bidders can tender for either of these Lot Areas. Bidders can also submit a tender for the entire Intervention Area (i.e. the Southern Intervention Area and Northern Intervention Area combined) as follows:

- Lot Area C: Combined Northern and Southern Intervention Areas

4.3 Lots

In order to facilitate the various combinations set out in section 4.1 and 4.2 above, this Procurement is divided into 6 Lots in total.

■ Ownership Model 1: Commercial Stimulus Model

- Lot 1A: Single Area Lot (Southern Intervention Area – Commercial Stimulus Model)
- Lot 1B: Single Area Lot (Northern Intervention Area – Commercial Stimulus Model)
- Lot 1C: Combined Area Lot (Northern and Southern Intervention Area – Commercial Stimulus Model)

■ Ownership Model 2: Concession Model

- Lot 2A: Single Area Lot (Southern Intervention Area – Concession Model)
- Lot 2B: Single Area Lot (Northern Intervention Area – Concession Model)
- Lot 2C: Combined Area Lot (Northern and Southern Intervention Area – Concession Model)

The Department has decided that it will short list a maximum of five Bidders on each of the individual Lots.

¹¹ The Commercial Stimulus Model is also known as the “Gap Funding Model” in a number of the adviser reports



Bidders can submit a PQQ Response for any or all of the Single Area Lots (i.e. any or all of Lot 1A, Lot 1B, Lot 2A or Lot 2B). Bidders can only submit a PQQ Response for Combined Area Lots (i.e. Lots 1C and 2C) in the circumstances set out in section 4.4.

The Department will drop one of the Ownership Models at the end of the pre-qualification stage (but prior to commencement of the dialogue stage). The dialogue stage and the remainder of the Procurement will from that point only consist of three Lots depending on which Ownership Model is retained, i.e. either:

- **Ownership Model 1:** Commercial Stimulus Model (Lot 1A, Lot 1B and Lot 1C); or
- **Ownership Model 2:** Concession Model (Lot 2A, Lot 2B and Lot 2C).

This will be given effect by the Department formally terminating the Lots for the Ownership Model that is dropped (whilst continuing the Procurement for the Lots for the retained Ownership Model). This is explained in more detail in section 5.2.

4.4 Eligibility for combined area bids

4.4.1 Introduction

As stated in section 3.1, the objective of the Project is to ensure that every citizen and business in Ireland, regardless of location, can have access to high speed broadband. This objective is underpinned by the principles set out in section 3.2, and in particular the following principle:

- **One-off intervention with target of achieving 100% coverage** - to deliver high speed broadband to all premises that will not be able to access such services through commercial investment alone.

In order to achieve the objective and principle set out above, the Department intends to either award Contracts for two Single Area Lots (i.e. Lots 1A and 1B or Lots 2A and 2B) or award a single Contract for a Combined Area Lot (i.e. Lot 1C or Lot 2C). Awarding one Contract for a Single Area Lot only (i.e. one of Lot 1A, Lot 1B, Lot 2A and Lot 2B) will not achieve the objective and principle set out above.

Accordingly, the Department reserves the right, at its sole discretion, to terminate both of the Single Area Lots for a particular Ownership Model and proceed only with the Combined Area Lot for that particular Ownership Model if, at any stage of the Procurement, there are no remaining Bidders in one of the Single Area Lots for that particular Ownership Model.

For example, if at any stage of the Procurement there are no Bidders remaining in Lot 1B, the Department may decide, at its sole discretion, to terminate Lot 1A and Lot 1B and proceed only with the procurement of Lot 1C.

The Department intends to run a competitive Procurement process which offers every Bidder a fair and equal opportunity to tender. The Department wishes to avoid the circumstance where competition is lost or diminished, or a Bidder loses its opportunity to tender for a Single Area Lot, as a consequence of another Bidder deciding to withdraw from a Single Area Lot whilst continuing in the Combined Area Lot.

Accordingly, the Department will require that the following requirements are met in order for a Bidder to be eligible to tender for a Combined Area Lot.

4.4.2 Requirement to submit a Response for both Single Area Lots (for the relevant Ownership Model)

Bidders can only submit a PQQ Response for a Combined Area Lot **for a particular** Ownership Model (i.e. either Lot 1C or Lot 2C) if it has also submitted a *bona fide* PQQ Response for **both** of the Single Area Lots **for that particular** Ownership Model (i.e. in the case of Lot 1C, both Lot 1A and Lot 1B or, in the case of Lot 2C, both Lot 2A and Lot 2B). If this requirement is not satisfied, the Response for the Combined Area Lot **for that particular** Ownership Model will be deemed non-compliant and ineligible and will be rejected.



4.4.3 Requirement to submit a compliant Response that satisfies the Pre-Qualification Minimum Requirements for both Single Area Lots (for the relevant Ownership Model)

Bidders are only eligible to pre-qualify for a Combined Area Lot **for a particular** Ownership Model (i.e. either Lot 1C or Lot 2C) if their PQQ Responses for **both** of the Single Area Lots **for that particular** Ownership Model (i.e. in the case of Lot 1C, both Lot 1A and Lot 1B or, in the case of Lot 2C, both Lot 2A and Lot 2B) are (i) *bona fide* and compliant **and** (ii) satisfy all of the Pre-Qualification Minimum Requirements. If this requirement is not satisfied, the Response for the Combined Area Lot **for that particular** Ownership Model will be deemed non-compliant and ineligible and will be rejected.

For the avoidance of doubt, a Bidder's Response (that is *bona fide*, compliant and meets the Pre-Qualification Requirements) does not have to be in the top five ranked Responses for:

- **either or both** Single Area Lot 1A and Single Area Lot 1B in order for that Bidder to be eligible to pre-qualify for the Combined Area Lot 1C; or
- **either or both** Single Area Lot 2A and Single Area Lot 2B in order for that Bidder to be eligible to pre-qualify for the Combined Area Lot 2C.

However, if a Bidder does not submit a *bona fide* compliant Response **and** satisfy all of the Pre-Qualification Minimum Requirements for **both** of the Single Area Lots **for a particular** Ownership Model, that Bidder will **not** pre-qualify for the Combined Area Lot **for that particular** Ownership Model.

For example, if a Bidder:

- submits a PQQ Response for Single Area Lot 1A, Single Area Lot 1B and Combined Area Lot 1C; and
- successfully pre-qualifies (i.e. is invited to the dialogue stage) for Single Area Lot 1A but does not submit a Response that is *bona fide* **or** compliant **or** satisfies the Pre-Qualification Minimum Requirements for Single Area Lot 1B,

then that Bidder is not eligible to and will not pre-qualify for Combined Area Lot 1C (but the Bidder will still pre-qualify for Single Area Lot 1A provided its Response was *bona fide* and compliant).

Accordingly, Bidders should submit a completed *bona fide* PQQ for every Lot that they wish to pre-qualify for, noting that if the Bidder wishes to pre-qualify for:

- **Combined Area Lot 1C, it must also submit a completed *bona fide* PQQ for Single Area Lot 1A and Single Area Lot 1B; and/or**
- **Combined Area Lot 2C, it must also submit a completed *bona fide* PQQ for Single Area Lot 2A and Single Area Lot 2B.**

4.4.4 Requirement to submit a compliant Detailed Solution, Refined Detailed Solution and Final Tender for all Single Area Lots for which the Bidder successfully pre-qualified (for the relevant Ownership Model)

A Bidder that pre-qualifies for a Combined Area Lot **for a particular** Ownership Model (i.e. either Lot 1C or Lot 2C) must submit a compliant *bona fide* Detailed Solution, Refined Detailed Solution (if applicable) and Final Tender for **all** of the Single Area Lots **for that particular** Ownership Model that the Bidder successfully pre-qualified (i.e. is invited to the dialogue stage) for (i.e. in the case of Lot 1C, Lot 1A and/or Lot 1B or, in the case of Lot 2C, Lot 2A and/or Lot 2B, depending on which Lots the Bidder pre-qualified for) for its Detailed Solution, Refined Detailed Solution (if applicable) and Final Tender for the Combined Area Lot **for that particular** Ownership Model to be eligible to be awarded the Contract.



If a Bidder does not do so (including as a result of the Bidder withdrawing from a Single Area Lot that it successfully pre-qualified (i.e. is invited to the dialogue stage) for, the, as applicable, Detailed Solution, Refined Detailed Solution and/or Final Tender for the Combined Area Lot **for that particular** Ownership Model will be deemed non-compliant and ineligible and will be rejected and the Bidder will be eliminated from the procurement of that Combined Area Lot.

For example, if a Bidder:

- submitted a *bona fide* compliant PQQ Response for Single Area Lot 1A, Single Area Lot 1B and Combined Area Lot 1C;
- its PQQ Response for each of those Lots satisfied the corresponding Pre-Qualification Minimum Requirements; and
- successfully pre-qualified (i.e. is invited to the dialogue stage) for Single Area Lot 1A and Combined Area Lot Area 1C but it did not successfully pre-qualify for Single Area Lot 1B,

the Bidder must submit a *bona fide* compliant Final Tender for Single Area Lot 1A in order for its Final Tender for Combined Area Lot 1C to be eligible.¹²

Similarly, if a Bidder:

- submitted a *bona fide* compliant PQQ Response for Single Area Lot 1A, Single Area Lot 1B and Combined Area Lot 1C;
- its PQQ Response for each of those Lots satisfied the corresponding Pre-Qualification Minimum Requirements; and
- successfully pre-qualified (i.e. is invited to the dialogue stage) for Single Area Lot 1A, Single Area Lot 1B and Combined Area Lot Area 1C,

the Bidder must submit a ***bona compliant*** Final Tender for **both** Single Area Lot 1A **and** Single Area Lot 1B in order for its Final Tender for Combined Area Lot 1C to be eligible.¹³¹⁴

4.4.5 Requirement for *bona fide* Responses, Detailed Solution, Refined Detailed Solution and Final Tenders for all Lots

Bidders should note that the Department reserves the right to reject:

- a Bidder's Response for all Lots if (having regard to the content of the Bidder's Responses for the various Lots, in particular) it is apparent that the Bidder has not submitted a *bona fide* Response for any Lot; or
- a Bidder's Detailed Solution, Refined Detailed Solution (if applicable) and/or Final Tender for all Lots if (having regard to the content of the Bidder's Detailed Solutions, Refined Detailed Solutions and/or Final Tenders for the various Lots, in particular) it is apparent that the Bidder has not submitted a *bona fide* Detailed Solution, Refined Detailed Solution and/or Final Tender for any Lot for which it pre-qualified.

4.5 Evaluation of combined bids vs single bids

¹² If, for instance, its Final Tender for Combined Area Lot 1C is non-compliant, this does not impact upon the eligibility of its Final tender for Single Area Lot 1A.

¹³ If, for instance, its Final Tender for Combined Area Lot 1C is non-compliant, this does not impact upon the eligibility of its Final tender for Single Area Lot 1A and/or Single Area Lot 1B.

¹⁴ These examples apply similarly at the Detailed Solution and, if applicable, Refined Detailed Solution stage.



The Department will evaluate the Final Tenders submitted for the two Single Area Lots and for the single Combined Area Lot for the retained Ownership Model using the award criteria. This will result in provisional preferred tenders for the two Single Area Lots and for the Combined Area Lot.

The provisional preferred tenders for the two Single Area Lots will then be compared against the provisional preferred tender for the Combined Area Lots (which is a tender for the two Single Area Lots combined, i.e. the total Intervention Area) using the award criteria.

The outcome of the evaluation will either be:

- a recommendation to award the Contracts to the preferred tenders for the two Single Area Lots; or
- a recommendation to award the (single) Contract to the preferred tender for the single Combined Area Lot.

The award criteria, and the evaluation methodology through which the award criteria will be applied, will be set out in the Invitation to Participate in Dialogue documents that are provided to the short list of Bidders that pre-qualify for each Lot at the end of this pre-qualification stage.



5 Intervention structure (lot areas and Ownership Models)

5.1 Intervention / Lot Areas

As mentioned above, the Intervention Area is split into two geographic areas:

- Lot Area A: Southern Intervention Area
- Lot Area B: Northern Intervention Area

Bidders can tender for either of these Lot Areas. Bidders can also submit a tender for the entire Intervention Area (i.e. Lot Area A and Lot Area B combined) as follows:

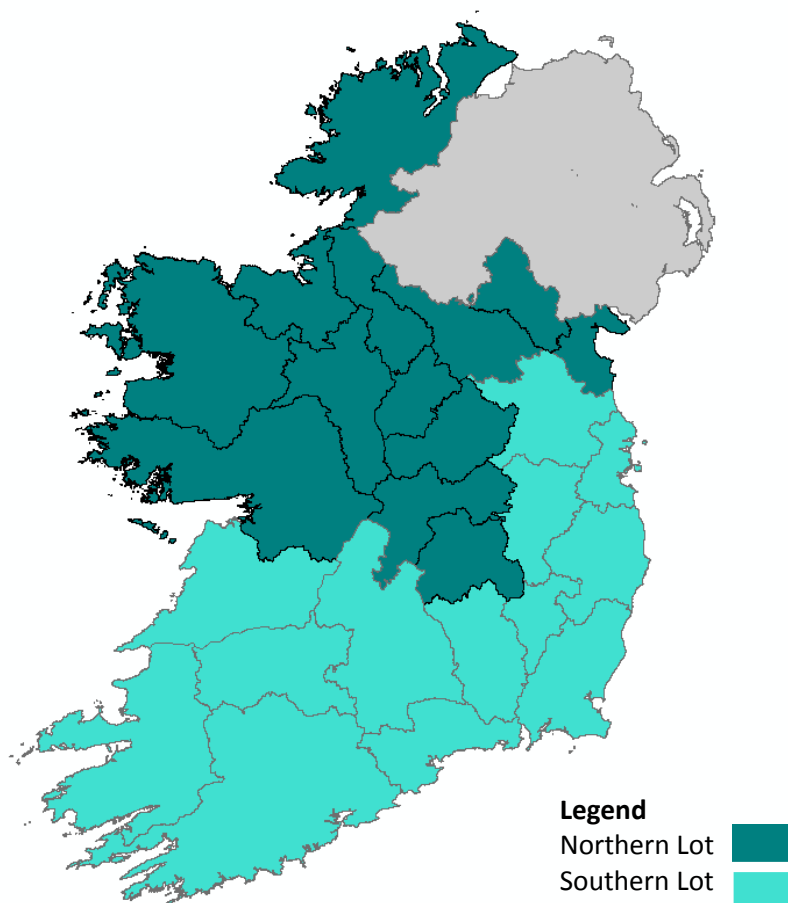
- Lot Area C: Combined Northern and Southern Intervention Areas

These Lot Areas are structured according to county boundaries. The counties included within the two Lot Areas (and corresponding Lots) are identified in the figure and tables below.¹⁵

Figure 5.1: Lot Areas A and B are shown according to county boundaries

¹⁵ The specific boundaries between the Southern Intervention Area and the Northern Intervention Area may potentially be changed during the Procurement such as where, for instance, for practical reasons where conurbations or terrain cross boundaries. This will be dialogued with Bidders to the extent considered necessary by the Department.





The tables below show DCENR's latest estimate of the number of premises, number of residential premises and number of business premises located within the Intervention Area, within each Lot Area and within each county within each Lot Area. As noted above, these figures may change.

Table 5.1: Counties included in Lot Area B (Northern Intervention Area).

County	Total number of premises in IA¹⁶	% of residential premises in IA	% of businesses in IA
Cavan	24,197	78.3%	21.7%
Donegal	52,004	83.8%	16.2%
Galway	62,540	81.9%	18.1%
Laois	16,201	79.8%	20.2%
Leitrim	13,326	81.0%	19.0%
Longford	11,691	81.9%	18.1%
Louth	15,129	81.1%	18.9%
Mayo	50,831	77.2%	22.8%
Monaghan	19,551	72.6%	27.4%
Offaly	17,130	80.7%	19.3%

¹⁶

Intervention Area.



Roscommon	24,856	79.5%	20.5%
Sligo	18,605	79.2%	20.8%
Westmeath	17,814	79.9%	20.1%
Total	343,875	80.0%	20.0%

Table 5.2: Counties included in Lot Area A (Southern Intervention Area)

<i>County</i>	<i>Total number of premises in IA</i>	<i>% of residential premises in IA</i>	<i>% of businesses in IA</i>
Carlow	10,555	81.0%	19.0%
Clare	34,501	79.3%	20.7%
Cork	85,972	80.6%	19.4%
Dublin	8,295	79.6%	20.4%
Kerry	51,180	83.5%	16.5%
Kildare	20,536	84.2%	15.8%
Kilkenny	22,455	79.2%	20.8%
Limerick	33,963	81.6%	18.4%
Meath	31,171	79.8%	20.2%
Tipperary	41,207	79.9%	20.1%
Waterford	17,897	82.2%	17.8%
Wexford	39,308	84.9%	15.1%
Wicklow	16,574	82.0%	18.0%
Total	413,614	81.4%	18.6%

The Department is providing a digital version of the High Speed Broadband Map 2020. The current number of premises included within the Intervention Area for each Lot Area can also be viewed using the interactive map at the following website address. The website also provides statistics on the current number of premises in the Intervention Area at a townland level. The number of premises is not static and can change.

<http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Connecting-Communities.aspx>

Bidders that pre-qualify and proceed to the next stage of the Procurement will be provided with the precise geo location for each building, and the number of premises associated with each building, within the Lot Areas they are bidding for, for use in preparing their Detailed Solutions. This information will not be shared with Bidders at the pre-qualification stage due to licensing restrictions. It should be noted that the geo-directory used to identify the number of premises in a given area is updated regularly. The Department, therefore, intends to update the statistics above in the ITPD that will be issued to the short listed bidders at the next stage of the Procurement.

The Combined Area Lot allows the Department to examine, using the award criteria, the value for money of tenders that address the entire Intervention Area as an integrated solution (i.e. a tender for the Northern and Southern Intervention Areas combined).

5.2 Ownership Models



The Department has examined a range of Ownership Options for the national broadband intervention Project and has published its advisers' consideration of these options within the Ownership Report.¹⁷

On the basis of its examination of the available Ownership Options, the Department has decided that two Ownership Models shall be included within the Procurement, subject to the Ownership Model Determination. The two Ownership Models are as follows:

- Commercial Stimulus Model (i.e. private sector build, finance, own, operate and maintain with obligations); and
- Concession Model (i.e. private sector finance, build, operate and maintain with asset reversion).

The two models are described in the table below. Further detail is provided in the Ownership Report.

Table 5.3: Ownership Models for the intervention

Commercial Stimulus Model: Private sector build, finance, own, operate and maintain with obligations	<p>The public sector contracts with a private sector partner who will finance, design, build, own, operate and maintain the broadband infrastructure.</p> <p>Capital subsidy will be paid to the private sector operator through grants, which are paid during deployment and through the operational life of the Contract.</p> <p>The grant amount will be the minimum amount necessary for the private sector to deliver the Project whilst also making an acceptable rate of return, and will be subject to claw back mechanisms that track actual financial performance against forecast during network build, operations and at Contract expiry.</p> <p>The private sector partner bears the risk associated with wholesale network financing, deployment, operation, maintenance and exploitation (including the provision of NGA wholesale services) over the 25 year Contract term and beyond, and the payments of capital grant (upfront and during operation) are subject to the operator meeting the performance standards in the Contract.</p> <p>The private sector retains ownership of the network at the end of the 25 year Contract.</p>
Concession Model: Private sector finance, build, operate and maintain with asset reversion	<p>The public sector will contract with a private sector partner who will finance, design, build, operate and maintain the broadband infrastructure.</p> <p>The private sector will derive economic benefit from the infrastructure for the duration of the Contract at which point the assets will revert to the public sector (at no additional cost). Asset reversion will be defined in the ITPD but in essence means the reversion of network assets to the Department, which together provide the Department with the capability to deliver the Services in the same manner and to the same quality as the services were provided prior to the date of termination.</p> <p>The way or ways in which assets may “revert” will be specified by the Department during the dialogue stage. “Assets”, for this purpose, is meant in the broadest possible sense including, for instance, contracts, rights, licences, leases, infrastructure, network and other physical assets. The options for reversion include (by way of non-exhaustive example) (i) transfer of ownership of some or all assets to the Department at the start or end of the Contract; (ii) grant of a right of use to the Department (or any replacement contractor) of</p>

¹⁷ Ownership Report can be found at <http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Connecting-Communities.aspx>



some or all assets so that it can provide replacement wholesale services and products for a set or indefinite period and upgrade the relevant network as necessary; (iii) assignment or novation of contracts, rights, leases and licences; (iv) grant of a right for the Department to sell rights of use for a set or indefinite period of some or all assets to third parties; and/or (v) an option for the Department to sell its rights to the Bidder for a price to be determined. The Department, before specifying the way or ways in which asset will revert, may (but is not obliged to) engage in dialogue with Bidders in this regard during the dialogue stage. The Department reserves the right to specify exactly the (single) way in which assets must and will revert.

On a similar basis to the Commercial Stimulus Model, capital subsidy will be paid to the private sector operator during deployment and through the operational life of the Contract.

The payments will be the minimum amount necessary for the private sector to deliver the Project whilst also making an acceptable rate of return during the concession period, and will be subject to claw back mechanisms that track actual financial performance against forecast during network build and operations.

The private sector bears the risk associated with wholesale network financing, deployment, operation, maintenance and exploitation (including the provision of NGA wholesale services) over the 25 year Contract term and the payments of subsidy (upfront and during operation) are subject to the operator meeting the performance standards in the Contract.

As explained in sections 4.1 and 4.3, Bidders may submit a PQQ Response for one or both of the Ownership Models.

The Government is continuing to examine the advantages and disadvantages of the two Ownership Models and will take a decision on the Ownership Model (and corresponding Lots) to be taken forward to the competitive dialogue stage after the deadline for submission of completed PQQ Responses but prior to the announcement of short list of Bidders that have prequalified for each Lot. The Government's (as distinct from the Department's) decision will be common to all Lots and will either be to:

- proceed to the competitive dialogue stage with the Commercial Stimulus Model only in which case it will proceed with Lots 1A, 1B and 1C (and will terminate Lots 2A, 2B and 2C); or
- proceed to the competitive dialogue stage with the Concession Model only in which case it will proceed with Lots 2A, 2B and 2C (and will terminate Lots 1A, 1B and 1C).

This is referred to as the “**Ownership Model Determination**”.

The Government's Ownership Model Determination will be made on an independent, non-discriminatory basis. Any individual:

- directly involved in the evaluation, dialogue or running of the Procurement on behalf of the Department; or
- who has been provided by the Department with a copy of, or access to, the Response or any other Bidder submissions during the Procurement,

will not make the Ownership Model Determination but may be involved in collating information, conducting analysis, preparing reports and conducting briefings for the individual (or individuals) who will make the Ownership Model Determination. The individual (or individuals) who will make the Ownership Model Determination will know, when selecting between the two Ownership Models, the number of Bidders (but will not be told by the Department the identity of Bidders) that would pre-qualify for each Lot on the basis of the expressions of interest made by Bidders in their completed



Responses (i.e. so that they don't know what each named Bidder specifically proposed). This is so that it can clearly be shown that the Ownership Model Determination was made on an independent, non-discriminatory basis.

This information will be provided by the Department in the following way.

Once it has completed the evaluation of the completed Responses for each Lot in accordance with section 12 of this PIM, the Department will identify for each Lot the list of Bidders that have:

- submitted a complete and compliant bona fide Response, to the satisfaction of the Department; and
- whose Response satisfies the Pre-Qualification Minimum Requirements.

The Department will then rank these Bidders by reference to the weighted score that they have achieved in the evaluation of their “*Economic and Financial Standing*” and “*Technical and Professional Capability*”, which is determined in accordance with the evaluation methodology set out in sections 12.6 to 12.8 of this PIM. The Bidder with the highest weighted score will be ranked first and the other Bidders ranked accordingly.

The Department will then create a table from this ranked list of Bidders as follows:

	Lot 1A	Lot 1B	Lot 1C	Lot 2A	Lot 2B	Lot 2C
Number of Ranked Tenderers (up to 5)						

This table will be provided to the individual(s) that is making the decision on the Ownership Model Determination, so that the individual(s) can take into account in the decision making process the number of Bidders (but not the identity of Bidders) that would pre-qualify for each Lot in relation to each of the Ownership Models set out above.

It is important to note, however, that this information will not be the main factor in the decision making process. Government's decision will be primarily based on the conclusions of its on-going examination of the advantages and disadvantages of the two Ownership Models.

Once the Ownership Model Determination has been made, the Department will in accordance with that determination either:

- proceed to the competitive dialogue stage with the Commercial Stimulus Model only in which case it will proceed with Lots 1A, 1B and 1C and invite the top 5 highest ranked Bidders for each of those Lots to the dialogue stage (and will terminate Lots 2A, 2B and 2C); or
- proceed to the competitive dialogue stage with the Concession Model only in which case it will proceed with Lots 2A, 2B and 2C and invite the top 5 highest ranked Bidders for each of those Lots to the dialogue stage (and will terminate Lots 1A, 1B and 1C).

It is, therefore, essential for Bidders to ensure that they submit a Response in respect of all Lots they have an interest in bidding for.

For the avoidance of doubt, if a Bidder wishes to be considered for inclusion in the short list of Bidders for the Contracts irrespective of whether the Government selects the Commercial Stimulus Model or the Concession Model, the Bidder must submit a Response for each and every one of the Lots it is interested in.

5.3 Financing the intervention

5.3.1 Key principles



As described above, irrespective of whether the Commercial Stimulus Model or Concession Model is selected, the Contractor will be required to finance the design and deployment of the wholesale broadband network and services.

The Department will pay to the Contractor a capital related subsidy in the form of a capital grant, part of which will be paid during deployment and part of which will be paid over the operational life of the Contract. The grant amount paid by the Department will be the minimum amount necessary for the Contractor to deliver the intervention and Project whilst also making an acceptable rate of return.

The capital grant paid during deployment will be part funded by €75 million (euro) from the European Regional Development Fund (ERDF), which requires exchequer match funding of €150 million (euro). This will bring additional monitoring and reporting requirements as explained in the Governance Report. These requirements will be set out in the Procurement documentation that is provided to short listed Bidders at the next stage of the Procurement.

The key principles that underpin the provision of the public subsidy are as follows:

Table 5.4: Key principles underpinning the provision of public subsidy:¹⁸

Principle	Description
Minimum amount necessary	Public subsidy is invested in the Project in accordance with the gap funding principle. This means that public subsidy paid to the operator should be capital related and no greater than the amount of the investment costs that cannot be financed by the Project itself on a normal commercial basis i.e. public subsidy should only be used to fund the gap between the commercially viable investment level (which is to be funded by the operator) and the investment required. Operator bears the normal commercial risks for wholesale services.
Saving in network build costs	The operator's capital investment should not be less than that included in the bid financial model. Any saving in network build costs should be passed on to the State through a reduction in the public subsidy (whilst ensuring that there remains a sufficient incentive on the operator to minimise deployment costs).
Risk of cost overruns	The subsidy amount is capped. The operator bears the risk of capital cost overruns at the total contract level (which allows for overspends and underspends by milestone and by phase within the scope of the contract)
Risk of lower net revenues	The subsidy amount is capped. The operator bears the risk that net revenues are lower than forecast, e.g. through lower than forecast take-up, lower than forecast revenue or higher than forecast operating costs
Sharing of additional benefit	The State should receive an appropriate share of any additional financial benefits that are enabled or supported by the provision of public subsidy
Contracted outcomes	The operator is contractually obliged to deliver the contracted outcomes for the contracted subsidy amount. The contracted outcomes include the coverage and speed commitments included in the Final Tender.
Change to contracted outcomes	The operator is contractually committed to delivering the outcomes included in the Final Tender. The operator is only able to request a change to the contracted outcomes in very limited circumstances, e.g. where the change relates to a Force Majeure Event.
Transparency	For public subsidy to be appropriately applied to the Project in accordance with State Aid Guidelines and the Public Spending Code, the operator will be subject to significant transparency requirements specified in the Contract, including accounting separation.

5.3.2 Structure of the subsidy payments¹⁹

¹⁸ The reference to the capped subsidy amount refers to the final subsidy amount set out in the Contract, subject to any increased subsidy paid pursuant to the terms of the Contract (e.g. as a result of a change under the change control procedure in the Contract).

¹⁹ Bidders should note that as the Project and Procurement is subject to State Aid clearance, it is possible that additional or refined requirements may be introduced with respect to the use of the subsidy. For instance, whilst currently it appears that there will be no restrictions on use of any network funded through the subsidy, it cannot, at this point, be ruled out that restrictions may need to be imposed in order to secure State Aid clearance. The Department accordingly reserves the right to



As described in the description of the Ownership Models in Table 5.3 above, the subsidy will be paid to the private sector operator in the form of a capital grant, part of which is paid to the Contractor during deployment and part of which is paid to the Contractor through the operational life of the Contract. This is described further below.

5.3.2.1 Subsidy payments during deployment

The capital subsidy paid during deployment will be structured as milestone payments, which will be paid to the Contractor on satisfactory completion of pre-defined deployment milestones that will be defined in the Contract, and subject to the Contractor being in compliance with any additional funder requirements (e.g. ERDF). The milestones on which milestone payments will be paid will be discussed with Bidders during the competitive dialogue process (and are accordingly subject to change) but may be structured along the following lines:

- satisfactory implementation of systems required for the provision of the services and the monitoring and reporting requirements of the Contract (including operational support systems and business support systems such as the Eol platform);
- wholesale access products and services available (at or above contracted speeds) at 20%, 40%, 60%, 80% and 100% of premises to be passed by the network (noting that these percentages are indicative); and
- satisfactory completion of the demand stimulation activity set out in the Contract.

The overriding principle is that a milestone payment will only be paid when the relevant deployment milestone is achieved. A milestone is achieved when the milestone tests indicate to the satisfaction of the Department that the required wholesale access products and services are available to all of the premises that are to be covered by that deployment milestone.

5.3.2.2 Subsidy payments during operation

It is envisaged that the capital related subsidy that is paid during the operational phase of the Contract will also be linked to, and will commence on, satisfactory achievement of the deployment milestones set out above for milestone payments. This will provide an additional incentive for the timely deployment of the wholesale network as some of the subsidy payments during operations may in effect be lost²⁰ if a deployment milestone is delayed.

5.3.3 Proposed approach to bidding for public subsidy

The Department has not at this stage set a maximum budget for the capital subsidy (in total terms, or in terms of the upfront or on-going subsidy payments), but, as explained below, reserves the right to do so.

impose such restrictions as may be necessary or prudent, in the Department's view (at its absolute discretion), to secure a favourable State Aid decision.

²⁰ Dependent on how the payment mechanism is defined through the dialogue process.



The Department intends for Bidders to bid the capital subsidy they require to deliver the Project requirements provided that it is consistent with the parameters defined by Government and in accordance with the key principles set out in section 5.3.1 above and the following approach:

- At the Detailed Solutions stage (see Procurement process in section 8), the Department will set out the parameters within which Bidders must structure their subsidy proposals. These parameters will be set out in the ITPD and will be based on the following principles:
 - the total subsidy requirement cannot be greater than 100% of the eligible capital expenditure²¹ (as Government is only permitted to subsidise capital expenditure);
 - a minimum percentage of the subsidy is to be spread over the Contract term;
 - the annual subsidy amount to be paid over the Contract term is also subject to a minimum value (in euro), subject to this minimum value being achievable within the total subsidy requirement of the Bidder;
 - the amount of capital subsidy to be paid during deployment is also subject to a minimum value (in euro), which is linked to the value of the ERDF funding contribution; and
 - the Department may also specify a maximum amount of capital subsidy that will be paid during deployment

This may apply on a Lot by Lot basis so that the parameters and maximum amount of subsidy are different for each Lot.

- It is possible that on the basis of the subsidy proposals received from Bidders at the Detailed Solutions stage, the Government (as distinct from the Department) may wish to refine the parameters within which Bidders must structure their subsidy proposals at the Final Tender stage for any or all Lots, in order to improve the value for money or affordability of the national broadband intervention for Government, taking account of available budgets at that time.²² Such refinement may also take account of the subsidy required to address the highest cost premises, as described in section 3.4.4 above. This is referred to as the “**Subsidy Parameters Determination**”.
- The Government’s Subsidy Parameters Determination will be made on an independent, non-discriminatory basis. Any individual:
 - directly involved in the evaluation, dialogue or running of the Procurement on behalf of the Department; or
 - who has been provided by the Department with a copy of, or access to, the Detailed Solutions or any other Bidder submissions during the Procurement,

will not make the Subsidy Parameters Determination but may be involved in collating information, conducting analysis, preparing reports and conducting briefings for the individual (or individuals) who will make the Subsidy Parameters Determination. The individual (or individuals) who will make the Subsidy Parameters Determination will not be given by the Department details revealing what Bidder submitted particular subsidy proposals, but will be provided with anonymised details of the total amount and profile of the subsidy proposals on a non-attributable basis. This is so that it can clearly be shown that the Subsidy Parameters Determination was made on an independent, non-discriminatory basis.

5.3.4 Claw back of subsidy paid during deployment

²¹ To be defined in the ITPD.

²² The Department reserves the right for the Government to do so likewise at the Refined Detailed Solution stage if such a stage is introduced, in which case it also reserves the right to do so after that for the Final Tender stage also. In such case, an earlier Subsidy Parameters Determination may be revisited and changed.



The subsidy amount that is determined through the Procurement process will be a capped amount.²³ The Contractor will be contractually committed to deliver all of its contractual obligations for an amount of subsidy that is no greater than the capped amount specified in its Final Tender. The Contractor, therefore, bears the risk of capital cost overruns at the total project level and the risk that the operating cost and revenue assumptions that it made in its Final Tender turn out to be wrong.

In order to ensure that the capital subsidy provided is no greater than the amount of the investment that cannot be financed by the Project itself on a normal commercial basis, any capital related savings (or the majority of such savings) that are secured during the network build phase (when measured against the original forecast capital costs) should be passed on to the State through a reduction in the public subsidy, in line with the State Aid Guidelines. Such a reduction may be realised as a reduction to the upfront capital subsidy or a reduction to the capital related subsidy during operations.

Nevertheless, in order to provide an incentive to the Contractor to conduct a highly efficient deployment, the Department will allow the Contractor to retain a reasonable minority share of the saved build costs, with the majority share being passed on to the State. The size of the minority share will be determined by the Department following engagement with Bidders during the dialogue stage of the Procurement. The need for such incentives is recognised in the State Aid Guidelines.

The governance process for subsidy payments will, therefore, place significant emphasis on financial transparency at a detailed cost level, with a high level of scrutiny of forecast build costs at the Procurement stage and the inclusion of mechanisms to monitor, review and adjust downwards (where appropriate) subsidy payments during deployment, based on an appropriate proportion of the build costs saved (when comparing actual costs incurred to those forecast in the Procurement process). The Contractor will, therefore, be required to put in place suitable arrangements to provide assurance and evidence to the Department that it is and will be compliant with the principles of transparency for both data and finances throughout the term of the Contract.

For the avoidance of doubt, the above applies in the case of both Ownership Models.

5.3.5 Subsidy payments subject to performance

Subsidy payments are subject to the Contractor meeting the minimum performance standards set out in the Contract during the network build and operation.

5.3.5.1 Performance during network build

Subject to discussions held and decisions taken during the Procurement process, it is possible that the Contract may provide for “delay payments” from the Contractor to the Department in the event that the Contractor is materially delayed in the achievement of the deployment milestones. The inclusion of such a mechanism will depend on the strength of:

- the incentives provided by the structure of the milestone payments and the ongoing subsidy during operations, both of which are triggered by milestones relating to premises passed (as defined in section 6.5.1);
- the commercial market incentive to commence the sale of wholesale products (which is lower in the Intervention Area due to the reduced number of premises passed);
- the competition at Procurement stage and the extent to which a Bidder’s price (i.e. subsidy requirement) might increase to account for the risk of delay payments being applied; and
- the perceived risk that, in the absence of such a mechanism, operators will not be sufficiently incentivised to prioritise deployment in the Intervention Area over other commercial investments.

²³ The reference to the capped subsidy amount refers to the final subsidy amount set out in the Contract, but is subject to any increased subsidy paid pursuant to the terms of the Contract (e.g. as a result of a change under the change control procedure in the Contract).



If delay payments are included within the Contract, they may be structured to provide appropriate incentives for the Contractor to achieve the overarching objectives of the Project (rather than offering a financial remedy for delays to every single milestone). Accordingly, delay payments may focus on the major deployment milestones set for the Project, for example:

- major milestone 1 – 60% of premises passed by the end of Year 3 of deployment
- major milestone 2 – 100% of premises passed by the end of Year 5 of deployment

As described in section 10.1, the Department may also require the Contractor, as a condition of the Contract, to provide a guarantee and/or performance bond in respect of the deployment phase where it is considered necessary to secure additional assurance from the Contractor, for example in relation to the completion of the deployment within the timescales set out in the Final Tender, or in relation to completing the deployment to the hardest to reach, least commercially attractive premises.

5.3.5.2 Performance during operation

The operational, service and contractual requirements of the Contract will be reflected in KPIs and service levels, against which the performance of the Contractor will be monitored and measured, most likely on a quarterly basis (dependent on the KPI) (or such other basis as the Department requires in its discretion).

The Contractor will manage, monitor and report to the Department its operational performance, service performance and Project contractual performance, with the frequency of reporting dependent on the specific nature of the service levels. The information will be provided within the “Service Performance & Service Credit Report”, which is one of a number of reports that the Contractor will be required to provide to the Department at specified times during the contract period. Section 5.7 of the Governance Report lists the main reports to be provided by the Contractor.

Any under-performance of the Contractor against the service levels may be addressed through the application of the service credit and remedial plan regimes.

Service credits are “reverse” payments to be made by the Contractor to the Department to reflect the deterioration in the level and value of performance. They will materialise as deductions applied by the Department to the capital related subsidy payments made during operation.

The financial values of the service credits to be deducted by the Department for failure of the service provider to achieve the required service level will be specified within the draft Contract that is provided to the short listed Bidders at the next stage of the Procurement. Service credits will be proportionate (in the context of the objectives of the Project) in terms of both the individual service levels themselves and in terms of the maximum potential aggregate service credits.

5.3.6 Sharing of additional financial benefit

In line with State Aid Guidelines, the Department will require an appropriate share of any additional financial benefits that are enabled or supported by the provision of public subsidy. This is in addition to the claw back of public subsidy in the event that the capital costs of the network build are lower than forecast at Final Tender stage (see section 5.3.4).

In the case of the Project, such additional financial benefits are likely to materialise in two main ways:

- where the Contractor’s actual net revenues (i.e. EBITDA) generated through the use of the subsidised network are greater than the forecast net revenues at Final Tender stage, and shared periodically during the term of the Contract; and
- where the terminal value of the wholesale network at the end of the Contract term is significantly greater than that forecast at Final Tender stage.

Increases in net revenues can materialise in a number of ways such as, for example, through higher than forecast take-up and revenues or lower than forecast operating costs (which might result from savings in network maintenance and operating costs or a reduction in any infrastructure access charges paid by the Contractor).



Increases in terminal value (i.e. the enterprise value of the network at the end of the Contract period) are likely to occur where the financial performance of the network during the Contract period significantly exceeds that forecast by the Contractor in its Final Tender for the Contract, and the strong financial performance is forecast to continue following the end of the Contract term.

In the Commercial Stimulus Model, this increase in terminal value is a benefit to the Contractor (who will receive the benefit of the stronger financial performance following the end of the Contract term). It is currently envisaged that the sharing mechanism may require the Contractor to share some of this additional benefit with the Department on Contract expiry (given the additional benefit results from a Government subsidised investment), either by payment of a capital sum on expiry of the Contract or by stage payments over time.

In the Concession Model, there may not be a terminal value for the Contractor at the end of the Contract term, and hence no claw back of terminal value, as the terminal value of the network is likely to pass to Government when the assets revert to Government.

The share of the additional financial benefits that is to be paid to Government under the Commercial Stimulus Model will be determined by the Department following engagement with Bidders during the dialogue stage of the Procurement, taking account of value for money considerations.

The benefit sharing arrangements described above are founded on the principles of transparency, where Government has full transparency of all operational, financial and management data relating to the operating phase of the Contract. Adherence to these principles will be an essential requirement of the Contract, and the Contractor will be required to put in place suitable arrangements to provide assurance and evidence to the Department that it is compliant with these principles throughout the Contract term.

5.4 Access to infrastructure

Bidders are required to comply and, as applicable, procure compliance by its Bidder Member Group Companies with any Mandatory IS Obligations explicitly identified in this section 5.4 as a Mandatory IS Obligation (as such Mandatory IS Obligations may be expanded upon or clarified during the Procurement) or any new mandatory obligations relating to infrastructure sharing that are explicitly introduced as such by the Department in this regard during the Procurement.

Bidders may be required to procure that Bidder Members sign a declaration agreeing to comply with Mandatory IS Obligations at any time during the Procurement as a condition of the Bidder being permitted to continue in the Procurement and remain eligible to win the Contract.

Bidders should note the obligations relating to collusion, anti-competitive conduct and confidentiality set out in section 13 of this PIM.

Bidders should note that Bidders must have secured, to the Department's absolute satisfaction, all necessary and legally enforceable rights of access to infrastructure proposed within their Final Tender by the date of submission of the Final Tender, except (if at all) to the extent stated otherwise, at the Department's absolute discretion, in subsequent Procurement documentation.

5.4.1 Chinese Walls

Any Bidder Member Group Company that owns or controls existing infrastructure must, to the Department's satisfaction, establish a documented "Chinese wall" between:

1. any personnel involved in a Bidder or Bidder Member's bidding team for the Project / Contract; and
2. the team within the Bidder Member Group Company that deals with any access request made by any Requesting Bidder Member with respect to existing infrastructure in the Intervention Area owned or controlled by the Bidder Member Group Company.

This must be an effective documented "Chinese wall" with complete separation and lockdown of information and relevant personnel (in each case physically, electronically and verbally), appropriate



internal procedures and protocols and appropriate governance, oversight and enforcement (including disciplinary action for non-compliance).

The Department reserves the right to prescribe additional and/or minimum requirements in this regard during the Procurement and to require the Bidder to procure its Bidder Member Group Companies to propose specific measures for comment and approval by the Department.

This is a Mandatory IS Obligation. Any Bidder that (whether itself or a result of a Bidder Member Group Company's acts or omissions) is in breach of this requirement may, at the Department's absolute discretion, be rejected and eliminated from the Procurement and its Solution and Final Tender rejected.

5.4.2 Compliance with laws and regulations

Bidders are required to procure that Bidder Member Group Companies comply, where a Requesting Bidder Member requests access to existing infrastructure in the Intervention Area **for the purpose** of a Bidder's (actual or aspirational) Solution or Final Tender, with any obligations the Bidder Member Group Companies may have under laws relating to the grant of access to existing infrastructure that the Bidder Member Group Company owns concerned or controls **in the** Intervention Area.²⁴

This is a Mandatory IS Obligation. Any Bidder that (whether itself or a result of a Bidder Member Group Company's acts or omissions) is in breach of this requirement may, at the Department's absolute discretion, be rejected and eliminated from the Procurement and its Solution and Final Tender rejected.

5.4.3 Reasonable requests²⁵

The Department expects existing infrastructure in the Intervention Area owned or controlled by a Bidder Member Group Company to be shared with a Requesting Bidder Member for the purposes of a Bidder's (actual or aspirational) Solution or Final Tender in a meaningful way (particularly without undue delay having regard to the timescale for this Procurement and the time it takes to put together a Solution or Final Tender) where:

- a reasonable request(s) for access to existing infrastructure in the Intervention Area is made by a Requesting Bidder Member to a Bidder Member Group Company for the purpose of a Bidder's (actual or aspirational) Solution or Final Tender;
- the reasonable request relates to the existing infrastructure in the Intervention Area owned or controlled by the Bidder Member Group Company concerned;
- there is no alternative passive infrastructure available to the Requesting Bidder Member that meets its reasonable requirements with respect to its (actual or aspirational) Solution or Final Tender in a reasonably cost efficient and technically feasible way;

²⁴ A Bidder Member Group Company is, for the purposes of this Procurement and the Pre-Qualification Documents, considered to be in breach of its obligations under law in relation to the grant of access to existing infrastructure **only** if:

- (i) a Court makes a ruling that the Bidder Member Group Company is in breach of any laws in relation to the grant of access to existing infrastructure **and** that ruling has not been appealed **and** the time period within which that ruling may be appealed has expired; or
- (ii) ComReg or another competent authority has made a direction, determination or decision, in accordance with the relevant law in relation to the grant of access to existing infrastructure, that the Bidder Member Group Company is in breach of any law in relation to the grant of access to existing infrastructure **and** that direction, determination or decision has not been appealed **and** the time period within which that decision, direction or determination may be appealed has expired.

²⁵ This section 5.4.3 sets out the Department's expectation, but it is not a Mandatory IS Obligation. This section 5.4.3 is an aspiration of the Department, but it does not give rise to an obligation on Bidders. For clarity, a Bidder will not be rejected if it does not comply with section 5.4.3 even in response to a reasonable request.



- access to the relevant existing infrastructure is material (for instance, access may not be material where it is small in scale and impact) to the Requesting Bidder Member's (actual or aspirational) Solution or Final Tender.

In the event of such a reasonable request, the Department expects all relevant persons to negotiate in good faith and resolve access terms and conditions, including price, in a timely manner taking account of the timetable for this Procurement.

In addition, in the event of such a reasonable request, the Department expects the owning or controlling Bidder Member Group Company not to impose any unreasonable restrictions on the use of the infrastructure as this could possibly be considered discriminatory.

However, the Department recognises that a Bidder Member Group Company may refuse to grant access to existing infrastructure if it is not technically (e.g. where doing so would raise reasonable health and safety issues or would raise reasonable capacity issues) and/or economically (e.g. where there is undue cost associated) feasible.

5.4.4 Non-discrimination

Where a Bidder Member Group Company (the "**Granting Bidder Member Group Company**"):

- enters into an agreement **on or after** the date on which the Contract Notice is published;
- under which agreement the Granting Bidder Member Group Company agrees to grant (whether on a mandatory or voluntary basis) access to existing infrastructure in the Intervention Area owned or controlled by the Granting Bidder Member Group Company to a Requesting Bidder Member in connection with the Requesting Bidder Member's (actual or aspirational) Solution or Final Tender; and
- the relevant Requesting Bidder Member is not a Bidder Member Group Company of the Granting Bidder Member Group Company,

the relevant Bidder must procure that the Bidder Member Group Company concerned shall, upon request by any other Requesting Bidder Member, offer the other Requesting Bidder Member access, in connection with the Requesting Bidder Member's (actual or aspirational) Solution or Final Tender, to existing infrastructure in the Intervention Area owned or controlled by the Bidder Member Group Company concerned on a non-discriminatory basis and on the same basis as it was granted to any other Requesting Bidder Member.

This is a Mandatory IS Obligation. Any Bidder that (whether itself or a result of a Bidder Member Group Company's acts or omissions) is in breach of this requirement may, at the Department's absolute discretion, be rejected and eliminated from the Procurement and its Solution and Final Tender rejected.

5.4.5 Infrastructure information

Bidders are required to procure the provision to the Department and to ComReg (or other competent authority), upon request by the Department, details of:

- the existing infrastructure which its Bidder Member Group Companies own or control in the Intervention Area;
- the existing infrastructure and other infrastructure that the Bidder intends to use in its own Solution and Final Tender (such as the nature and location of the infrastructure and the terms and conditions under which it is being used);
- access to relevant existing infrastructure in the Intervention Area granted by its Bidder Member Group Companies to a Requesting Bidder Member in connection with the Requesting Bidder Member's (actual or aspirational) Solution or Final Tender, along with the associated terms and conditions of access, including pricing; and



- access to relevant existing infrastructure in the Intervention Area granted to the Bidder or its Bidder Members, in connection with its (actual or aspirational) Solution or Final Tender, by a Bidder Member Group Company of a different Bidder, along with the associated terms and conditions of access, including pricing.

The Department may elaborate upon exactly what information must or need not be provided to comply with this section 5.4.5.

This is a Mandatory IS Obligation. Any Bidder that (whether itself or a result of a Bidder Member Group Company's acts or omissions) is in breach of this requirement may, at the Department's absolute discretion, be rejected and eliminated from the Procurement and its Solution and Final Tender rejected.

5.4.6 Reference terms and conditions

If it has not been possible for a Requesting Bidder Member and Bidder Member Group Companies to agree terms and conditions of access within the timescales required of this Procurement, the Department may (but is not obliged to) set (with the advice of ComReg, the Competition and Consumer Protection Commission and/or other relevant competent authority) appropriate reference terms and conditions, including pricing, that a Bidder may, for the purposes of its Solution and/or Final Tender, assume it will be offered for access to relevant existing infrastructure. This will be further described in the ITPD.²⁶

5.4.7 Investigations and findings

The Department reserves the right (but is not obliged) to:

- itself investigate and determine whether a Bidder has procured compliance with this section 5.4, and/or
- request a Court, ComReg, the Competition and Consumer Protection Commission or other relevant competent authority to investigate or make a decision or ruling regarding whether a Bidder has procured complied with this section 5.4,

on the Department's own initiative or in the event that there is a complaint from a Bidder regarding its (or its Bidder Member's) ability to get access (including the terms on which access was granted or offered) to the existing infrastructure in the Intervention Area of another Bidder Member Group Companies in connection with that complaining Bidder's (actual or aspirational) Solution or Final Tender for the Project.

5.4.8 Cure

The Department reserves the right (but is not obliged) to give a Bidder a period, as such period is determined by the Department at its absolute discretion (having regard, in particular, to the tight timelines within which this Procurement is being undertaken and must be completed and the fact that there has already been non-compliance with a Mandatory IS Obligation) to remedy, or procure the remedying of, any non-compliance with a Mandatory IS Obligation. If the Department decides (at its absolute discretion) to do this, the Bidder will not be rejected and eliminated from the Procurement if the non-compliance with the Mandatory IS Obligation is remedied to the Department's satisfaction. However, it may be rejected if the non-compliance is not remedied within the period determined by the Department (at its absolute discretion).

²⁶ The Department reserves the right to (but is not obliged to) clarify a Final Tender by adapting it from the assumed access terms and conditions to those ultimately agreed where they are agreed after submission of a Final Tender and to take the clarified Final Tender into account in the evaluation if it considers this can be done without undue procurement risk.



For clarity, this applies in respect of all Mandatory IS Obligations.

5.4.9 Suspension

Bidders should note that, whilst the Department reserves the right to suspend the Procurement pending the resolution of any legal proceedings, regulatory investigation or investigation by the Department or otherwise in connection with access to existing infrastructure in the Intervention Area, it is not obliged to do so (and that, if it does suspend the Procurement, it can lift that suspension at any point at its sole discretion).

5.4.10 Definitions

In this section 5.4:

“**access**” means a right of use (including access to and right to build upon) in respect of existing infrastructure or other suitable and meaningful alternative rights. The Department may, at its absolute discretion, elaborate upon what “access” does and does not include.

“**Bidder Member Group Company**” means:

- a) the Bidder;
- b) the Bidder’s Bidder Members;
- c) each member of the Bidder or Bidder Member (including each legal and beneficial owner of shares in the Bidder or Bidder Member (if any)) and any entity for whom or on whose behalf such member acts (the “**Bidder Shareholders**”);
- d) in relation to the Bidder or its Bidder Members or its Bidder Shareholders (the “**Relevant Company**”), an undertaking which from time to time belongs to the same group of companies (as defined in Section 8 of the Companies Act 2014) as the Relevant Company or is an undertaking of substantial interest (as defined by Section 314 of the Companies Act 2014) of either the Relevant Company or any company which belongs to the same group of companies (as defined in Section 8 of the Companies Act 2014) as the Relevant Company, provided that, for the purposes of the membership requirement contained in Sections 7 and 8 of the Companies Act 2014, a company (the “**Parent**”) shall be treated as a member of another company (the “**Parent’s Subsidiary**”) even if the shares in the Parent’s Subsidiary are registered in the name of a nominee of the Parent; and
- e) any company which is a related company (as defined by Section 2(10) of the Companies Act 2014) of any of the above (and, for the purposes of Section 2(10) of the Companies Act 2014, “company” includes any body corporate).

“**existing infrastructure**” means the passive infrastructure that is owned or controlled by a Bidder on the date the Contract Notice for this Procurement was published (or such later date during the Procurement as is specified by the Department during the Procurement). The Department may, at its absolute discretion, elaborate upon what “existing infrastructure” does and does not include.

“**Mandatory IS Obligations**” means, subject to section 5.4.8, any of the obligations set out in this section 5.4 which are explicitly stated to be a Mandatory IS Obligation (to the exclusion of anything not explicitly stated to be a Mandatory IS Obligation);

“**owns or controls**” means, with respect to existing infrastructure in the Intervention Area, where a Bidder Member Group Company either:

- a) owns the relevant existing infrastructure; or
- b) has sufficient rights in respect of the relevant existing infrastructure to grant access to the relevant existing infrastructure to a third party without breaching a legally binding and enforceable contract (in its form as of the date the Contract Notice was published) that was entered into prior to the date the Contract Notice for this Procurement was published,

and “**controlled and owned**” is construed accordingly;



“Requesting Bidder Member” means a Bidder or Bidder Member that requests access to existing infrastructure in the Intervention Area for the purposes of the relevant Bidder’s (actual or aspirational) Solution or Final Tender.

5.5 Access to spectrum

ComReg has consulted on its proposals for the release of spectrum rights in the 3.6 GHz band, the 2.6 GHz band and other bands, and a draft decision is expected to be published in the near future. It is currently expected that any competitive award of spectrum rights will take place in 2016.

The Department recognises that for some Bidders for the national broadband intervention Project, access to spectrum may form a key component of their Solution or Final Tender, and the Department does not wish ComReg’s ongoing spectrum consultation process to prevent such Bidders from participating in this Procurement.

Accordingly, the Department will allow short listed Bidders to participate in the competitive dialogue stage and to develop and submit Solutions (but not Final Tenders unless determined otherwise by the Department, at its absolute discretion) on the assumption that they will be successful in securing the spectrum rights required to deliver their Solution or Final Tender.

However, such Bidders must secure the required spectrum rights to deliver their Solution prior to the submission of Final Tenders (or by such other later date that the Department requires at its absolute discretion), so that the Department is able to maintain the integrity of the Procurement process and contract for the provision of the Project in the knowledge that the Contractor has secured the necessary spectrum to deliver its Solution.²⁷

In electing to participate in this Procurement, such Bidders accept the risk that:

- they may not be successful in securing the spectrum necessary to deliver their Solution;
- having secured the spectrum necessary to deliver their Solution or Final Tender, they may not be awarded a Contract; or
- if spectrum is awarded after the submission of Final Tenders (and if, at the time, the submission of Final Tenders conditional on a spectrum award is acceptable to the Department at its absolute discretion)²⁸, the cost of securing the necessary spectrum may be higher than the cost assumed in their Final Tender (and, if awarded the Contract, they will not be entitled to an increase in their tendered price regardless of the price paid for any spectrum).

5.6 Ensuring delivery of planned commercial investments

The objective of the Project is to ensure that every citizen and business in Ireland, regardless of location, has access to high speed broadband.

In developing the High Speed Broadband Map 2020, the Department has been engaging with operators since 2013 to identify those areas where there are concrete plans to roll out high speed broadband on a commercial basis. Such areas are excluded from the High Speed Broadband Map 2016 at this point in time.

Nevertheless, even where an operator’s business plan in respect of its commercial investment plans are considered credible from a financial, technical and deployment perspective, given the timeframe involved in any roll out, there remains a real risk that such plans may not materialise (in full or in part).

²⁷ For the avoidance of doubt, the Department is likely to require that the Preferred Bidder secures all necessary access to assets, including spectrum (where appropriate), before the Contract is awarded.

²⁸ The Department may refuse to permit such conditional Final Tenders. If it does permit such conditional Final Tenders, it may be on such terms as the Department specifies at its absolute discretion (including a requirement to secure spectrum within a set period of time).



If an operator's commercial plans are not implemented fully and in a timely manner, this would undermine the Government's policy objective of delivering high speed broadband to every citizen and business in Ireland.

To address this risk, the Department considers it necessary that an operator whose investment plans are considered credible from a technical, deployment and financial perspective, will agree to enter into a binding commitment contract with the Minister for Communications, Energy and Natural Resources ("**Minister**"). In consideration of entering into such a commitment contract, the Government will forebear from intervening in the relevant area. Under the commitment contract, the operator will commit to delivering its plans by agreed milestones and to report to the Department regularly on deployment progress.

Where an operator has entered into a commitment contract with the Minister, certain consequences will follow from failure to meet deployment plans by agreed milestones. In particular, the Department may amend the Intervention Area and intervene in those areas where the operator's investment plans have not materialised by the agreed milestones (as explained in sections 5.7 and 5.8 below). Furthermore, the operator may be liable to reimburse the Minister on an indemnity basis (capped as appropriate) for any reasonable costs, expenses and charges incurred by the Department as a result of any delay or failure to meet agreed milestones. For the avoidance of doubt, such consequences would be invoked by the Minister acting reasonably and in a proportionate manner, taking into account the magnitude of the breach, and all the circumstances surrounding the breach.

The commitment contract will also contain monitoring provisions, under which the operator will report regularly to the Department on deployment progress. The Department will have the right to publish deployment progress and any failure to meet milestones. This is considered essential to maintaining public awareness and confidence that Government's NBP policy objectives will be met.

The Department has not entered into any commitment contracts as at 22 December 2015. However, the Department reserves the right to do so during the Procurement (as discussed in section 5.7) or after the Contracts become effective (as discussed in section 5.8). If the Department enters into such a commitment contract, this may reduce the size of the Intervention Area and/or the number of premises within the Intervention Area.

In addition, the Department may (but is not obliged to) incorporate within the Contract, or make a pre-condition to the effectiveness of the Contract execution of a separate legal contract containing, specific terms and conditions which requires the winner of the Contract to deliver the planned commercial NGA investments to which it has contractually committed as described above (as represented on the High Speed Broadband Map 2020) in accordance with the plans submitted to, and the conditions agreed with, the Department. These terms and conditions may require the delivery of the Contractor's planned commercial NGA investments to be subject to the same (or similar) contract governance regime, including remedies, as will be applied to the NGA deployment for the Intervention Area. This is consistent with the overall objective of this Procurement.

5.7 Potential changes to the Intervention Area during procurement

As described in section 3.4, the Department has concluded its mapping process and has published details of its updated High Speed Broadband Map 2020 and the current Intervention Area at the following website.

<http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Connecting-Communities.aspx>

The current Intervention Area provides the current basis for this Procurement and for the definition of each Lot Area (as described in section 5.1 above). The Department does not propose to (and is not required to) change the Intervention Area during the Procurement, though it reserves the right to do so including if it, at its absolute discretion, considers it absolutely necessary to do so such as, for



example, for reasons of consistency with State Aid rules and guidelines or public procurement rules or for the purposes of securing value for money.²⁹

The current published Intervention Area provides operators with a high level of clarity and certainty in relation to the scale and scope of the national broadband intervention and enables them to make informed decisions in relation to the Lots for which they wish to bid. It also provides the Department with a sound basis for specifying its requirements for the Intervention Area and for each Lot, for Bidders to start to develop their Solutions for delivering the Department's requirements and for the Department to assess and respond to those Solutions at each stage of the Procurement.

As stated above, the Department does not propose to change the Intervention Area during the Procurement but reserves the right to do so including if it considers it absolutely necessary to do so, and the Department will not invite operators to come forward with new investment proposals in respect of the Intervention Area during the Procurement. However, the Department cannot prevent operators from making further announcements of planned NGA investments.

Accordingly, in the event that the Department becomes aware of an increase or decrease in planned private sector NGA investment including where the Department considers it may potentially make it absolutely necessary to change the Intervention Area, the Department may (but is not obliged to) examine such planned investments on the same basis and with the same requirements as it used to arrive at the published High Speed Broadband Map 2020 and Intervention Area (as discussed in section 3.3 of this PIM).

Depending on the outcome of such examination, the Department may (but is not obliged to) update the High Speed Broadband Map 2020 and Intervention Area during the Procurement (prior to the submission of Final Tenders) including when taking account of public procurement rules and/or State Aid rules and guidelines. In such circumstances, the Intervention Area would then be "frozen" again to provide a stable basis for Bidders to refine their Solutions³⁰, prepare Final Tenders and for the Department to evaluate those Solution and Final Tenders and to award the Contract(s).

For this reason, the Department reserves the right, at its absolute discretion, to assess any changes to operator claims of planned coverage that arise during the Procurement (prior to Final Tenders). The Department will continue to consult with the European Commission on the High Speed Broadband Map and Intervention Area as part of the State Aid notification process.

5.8 Potential changes to the Intervention Area post Contract award

Once the Contract(s) is/are awarded, the State intervention will be contractually committed and, accordingly, it is envisaged that the circumstances in which the Department will be required and/or prepared to make a change to the Intervention Area will be limited.

Nevertheless, the Department reserves the right, at its absolute discretion, to make a change to the Intervention Area after the award of the Contract(s). Such changes may relate to an extension of the Intervention Area or a reduction in the Intervention Area, as described in the paragraphs below.

The Department will have the right to refuse any change to the Intervention Area requested by the Contractor.

5.8.1 Extending the Intervention Area

The Department intends to include a mechanism within the Contract(s) that allows the Department and the Contractor to implement an extension to the Intervention Area in the event that a planned commercial NGA investment fails to materialise resulting in some areas/premises not receiving NGA

²⁹ It is not possible to say how small or large such a change in the Intervention Area would need to be, and as a result there is no limit to how big or small the scope of such a change may be.

³⁰ The Department recognises that in such circumstances Bidders will require additional time to refine their Solution



broadband coverage to a similar standard to the Minimum Standard NGA Service. Provided the approach and contractual mechanisms for extending the Intervention Area are appropriately structured and are explained in the State Aid notification and in the procurement documentation, there may not be a requirement for the Department to submit further State Aid notifications in respect of such extensions.

The Intervention Area would be extended by means of the change control process contained within the Contract. This would involve the Contractor preparing a network design for the additional area and also a financial model that forecasts costs and revenues for the extended area on the same basis as the financial model for the original Intervention Area (submitted to the Department in this Procurement process by the Contractor concerned). It is envisaged that the network deployment in the extended Intervention Area would be subject to the same terms and conditions as the original Intervention Area, and the network build and operation would be managed by the Department in accordance with the terms of the Contract. The payment of additional subvention would also be subject to the same performance and claw back regimes.

Further details of the proposed terms and conditions of the Contract will be provided to the short listed Bidders as part of the procurement documentation for the next stage of the Procurement.

As described above, the Department will continue to consult with the European Commission on the High Speed Broadband Map 2020 and Intervention Area as part of the State Aid notification process.

5.8.2 Reducing the Intervention Area

Under the State Aid Guidelines, there is no requirement for the Department to reduce the Intervention Area in response to a new announcement of planned commercial investment after the award of the Contract(s). Nevertheless the Department will reserve the right in the Contract(s) to issue a change request that requires the Contractor (in accordance with the change control procedure) to assess and report to the Department on the financial and non-financial impacts of making a change to the Intervention Area (including the implications for the level of State aid required for the Intervention Area). Such assessment would be made by reference to the original network design and financial model and other relevant elements of the Contract (and proposed changes to them).

Where, for instance, the financial and non-financial benefits of making the change outweigh the costs (and the change is not detrimental to the business case of the Contractor), the Department may request the Contractor to implement the change (such request being subject to the agreement of the Contractor), resulting in a reduction in the Intervention Area to take account of the new commercial investment.

If a new announcement of planned commercial investment is made after the Contractor has commenced the final design stage (or equivalent) for that phase of its deployment, it may be too late for the Department to request a change to the Intervention Area.

5.9 Strategic Environmental Assessment (SEA) and Appropriate Assessment (AA)

In accordance with the SEA Directive 2001/42/EC and the Habitats Directive 92/43/EEC, the Department has screened the draft Intervention Strategy on the need for a Strategic Environmental Assessment and an Appropriate Assessment (respectively). The determinations were published on 2nd November 2015 and can be found at the following web address:

<http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Environmental-Assessments.aspx>

The determinations conclude that:

- **Strategic Environmental Assessment** – an Environmental Assessment of the proposed National Broadband Intervention Strategy is required; and



- **Appropriate Assessment** – an Appropriate Assessment of the proposed National Broadband Intervention Strategy is required.

As both a Strategic Environmental Assessment and an Appropriate Assessment are deemed necessary, the Department has commenced a formal procurement process to appoint suitably experienced consultants in early 2016 to advise on the Strategic Environmental Assessment and Appropriate Assessment, and in particular to:

- to complete the Strategic Environmental Assessment;
- compile a Natura Impact Assessment; and
- contribute to the completion of the Appropriate Assessment.

As the Strategic Environmental Assessment and Appropriate Assessment are likely to be informed by the Solutions proposed by Bidders, the Department reserves the right to require Bidders to provide specific details of their Solution(s) during the Procurement in order to facilitate the completion of the Strategic Environmental Assessment and Appropriate Assessment.

The Department also reserves the right to require the Contractor(s) to provide such assistance as is reasonably required by the Department (and under the terms of the Contract(s)) to support or deliver any further requirements relating to statutory and regulatory environmental obligations post Contract award and to provide assurance of their compliance post Contract award. The Department or other relevant authority shall monitor such compliance.

Bidders should note that subject to the specific details of their Solution in their Final Tender it may be the case that additional Appropriate Assessments or Environmental Impact Assessments may be required prior to the implementation of such solution(s).

It is envisaged that such requirements will be set out in the procurement documentation that is provided to short listed Bidders at the next stage of this Procurement. The Department reserves the right to update these requirements at any stage of the Procurement process.



6 Intervention service requirements

6.1 Wholesale service specification

The Contractor will be responsible for financing designing, building, operating, maintaining and exploiting a wholesale NGA network in a manner which, as a minimum, meets the requirements of the Contract.

This section summarises the likely key elements of the wholesale operational and service specifications for the intervention. These specifications will be further defined and refined during the Procurement process. Further details are provided in the Technical Report³¹ prepared for the Department.

6.1.1 NGA wholesale network

The NGA wholesale network provided by the Contractor must cover the backhaul and access requirements of the Intervention Area and must be able to provide a range of NGA wholesale services (described further below) that are suitable to different types of retail service providers (RSPs) and third-party wholesale service providers (WSPs): from larger, more sophisticated RSPs and third-party WSPs owning and managing some of their own infrastructure, to RSPs and third-party WSPs that are smaller and whose own infrastructure is limited. The wholesale services need to provide cost-effective, high-quality connectivity from customer premises in the Intervention Area to the RSP or third-party WSP, via an agreed interconnect point or point of handover (PoH).

The wholesale services required of the Contractor are passive and active; with passive wholesale services providing a connection between the Contractor's network and an RSP or third-party WSP's network via a direct physical connection to infrastructure, and active wholesale services providing a connection between the Contractor's network and an RSP or third-party WSP's network via electronic equipment. The types of wholesale services that will be required of the Contractor are described further below.

6.1.2 Wholesale services

The wholesale services that are to be provided by the Contractor are segmented into passive access, active access, passive backhaul and active backhaul services as listed below. The passive access services required of the Contractor will depend on the technology and network architecture the Contractor deploys. Where applicable to the technology and network architecture used by the Contractor, the following services should be provided as a minimum:

■ Passive access services

- duct access;
- pole access;
- unbundled fibre;
- dark fibre access; and
- radio tower and mast access.

■ Active access services

- bitstream; and
- virtual unbundled access.

³¹ Technical report can be found at <http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Connecting-Communities.aspx>



■ **Passive backhaul services**

- duct access;
- pole access;
- dark fibre access;
- radio tower and mast access; and
- building and cabin co-location.

■ **Active backhaul services**

- Interconnect; and
- transmission capacity.

Section 5 of the Technical Report provides further details on these wholesale service requirements. The wholesale products should be available across the scope of infrastructure that the Contractor uses to deliver the intervention.

The Department is conscious that, as described in the Intervention Strategy, there may be exceptional or unforeseen circumstances which preclude a Bidder from providing one or more of the required services at all points or locations in their network. For example, it would not be feasible for FWA to provide sub-loop unbundling due to the architecture of the network. Accordingly, the Department may consider such issues during the Procurement and, acting reasonably to all Bidders, may in limited circumstances (such as those described in section 8 of the Intervention Strategy) allow some derogation from the wholesale service requirements.

However, the onus will be on a Bidder to demonstrate to the Department's satisfaction why the provision of a required wholesale service is not technically or otherwise feasible. The Bidder should also demonstrate that it has taken reasonable steps to explore solutions to these issues in order to provide the minimum wholesale service set listed above. The Department reserves the right to require additional commitments from such Bidders to appropriately compensate for the omission of any of the minimum required wholesale services. These commitments could include additional wholesale service obligations.

In addition, the Department, following consultation with the European Commission, reserves the right to allow some flexibility in relation to the date from which the full set of minimum required wholesale services should be available, taking into account:

- the time taken to develop such services, and that prospective Bidders will currently be at different stages of product development process; and
- the complexities of launching the full portfolio of access and backhaul products at the same time as the wholesale network is being deployed.

Accordingly, the Department may allow for some of the wholesale services not to be available from commencement of deployment but to be gradually introduced during the deployment process. However, it is anticipated that all of the required services may need to be available on completion of network deployment. This will be determined during the Procurement process.

6.1.3 Minimum specification for wholesale active access services

The likely minimum performance for the wholesale active access services are as follows:

Table 6.1: Proposed minimum specification for wholesale active access services

Performance parameter	Minimum performance anticipated
Minimum download speed between NTE and PoH	30Mbit/s
Minimum upload speed between NTE and PoH	6Mbit/s or twice the maximum upload speed of any existing broadband services, whichever is greater



Maximum utilisation of backhaul link between first point of active aggregation and PoH	80%
Maximum latency (one-way) between NTE and PoH	25ms
Maximum jitter between the NTE and the PoH	25ms
Maximum packet loss between the NTE and PoH	0.1%
Minimum service availability	99.95%

6.1.4 Wholesale operational and service performance

It is envisaged that the Contractor will be required to enter into a Service Level Agreement with relevant RSPs or third-party WSPs (as applicable) under which the Contractor will be required to provide the services to agreed standards.

The Service Level Agreement (SLA) will set out the Contractor's commitment to provide services to agreed standards (i.e. minimum levels of service) and will also set out the financial and/or non-financial remedies (e.g. compensation) that the RSP or third-party WSP will be entitled to in the event that the Contractor's performance falls below the specified standard (e.g. if the delivery of the service was late). These service levels are likely to cover two key aspects of the Contractor's performance:

- **Operational performance** – the day to day performance of the Contractor in the provision of operational services to address the full customer life-cycle for RSPs and third party WSPs (it does not consider the performance of the broadband service itself). This incorporates service levels relating to the availability of the Contractor's equivalence of inputs (EoI) platform, enablement of the RSP, broadband service ordering, engineering support, broadband service provisioning, broadband service testing, fault resolution, bill disputes and reporting of performance to the RSP / WSP.
- **Service performance** – this considers the performance of the broadband service, and incorporates service levels relating to downlink throughput, uplink throughput, latency, jitter, packet loss and service availability.

It is envisaged that the SLAs will be based on standard terms and conditions that apply between wholesale operators and RSPs throughout Ireland (i.e. used in commercial areas as well as the intervention area).

The Contract between the Minister and the Contractor will set out the wholesale service requirements and obligations that are to be delivered by the Contractor in return for the provision of the public subsidy required to support its investment in the wholesale network, products and services for the Intervention Area. The Contract will specify the standards to which those service requirements and obligations must be delivered, and the financial and/or non-financial remedies that the Minister will be entitled to in the event that the performance falls below the specified standards. Similar to the SLAs with RSPs or third-party WSPs, these requirements and obligations can be categorised into two key areas:

- **Wholesale operational performance** – this considers the day to day operational performance of the Contractor during the operational phase. This incorporates similar service levels to those incorporated within the commercial SLAs, including the availability of the Contractor's equivalence of inputs (EoI) platform, enablement of RSPs, broadband service ordering, engineering support, broadband service provisioning, broadband service testing and fault resolution. The Contract will, however, consider these service levels from the perspective of the whole Intervention Area (i.e. on an aggregate / average basis), as opposed to at the level of each individual RSP or third-party WSP. The Department will also wish to ensure that the Contractor is operating on an EoI basis and is not discriminating between RSPs / WSPs and, accordingly, the Department will also wish to examine the consistency of the Contractor's operational performance across the market.



- **Wholesale service performance** – this considers the performance of the broadband service delivered by the Contractor within the Intervention Area. This incorporates similar service levels to those incorporated within the SLA with an RSP, including downlink throughput, uplink throughput, latency, jitter, packet loss and service availability. As above, the Contract will consider these service levels from the perspective of the whole Intervention Area (i.e. on an aggregate / average basis). The Department will also wish to ensure that the Contractor is providing services on an EoI basis and is not discriminating between RSPs / WSPs and, accordingly, the Department may also wish to examine the consistency of the broadband service performance across the market.

6.1.4.1 Wholesale operational performance

Section 5 of the Technical Report describes the likely operational requirements and service levels that will be required of the Contractor in respect of its operational performance. The table below summarises the main operational service levels, and explains how each service level is likely to be configured and measured within the Contract. The minimum standards of service that are likely to be required in respect of each service level are set out in the Technical Report.

Table 6.2: Example service levels for operational performance

Service Level	Description	DCENR aggregate measures across the IA (examples)	DCENR consistency / EoI measures for the IA (examples)
Availability of EoI platform	EoI platform and help desk to be available all of the time (except for planned outages)	Percentage availability of EoI platform and help desk	N/A
RSP enablement	Setting up RSP interface to allow access to EoI services / wholesale services	Percentage of RSPs enabled within agreed timescale	Identifying any trends in variances from target timescales between RSPs
Broadband service ordering	Ordering a broadband service connection by the RSP for a specific premise	Percentage of premises receiving confirmation of provisioning date within target timescale	Identifying any trends in variances from target timescales between RSPs
Broadband service provisioning	The time it takes from RSP order to provide a live broadband service for the end user	Percent of premises with broadband installed and provisioned within a set number of weeks	Identifying any trends in variances from target percentages between RSPs
Broadband service testing	Testing the wholesale access and backhaul network on request of RSP	Percentage of tests completed and reports provided in target time	Identifying any trends in variances from target timescales between RSPs
Fault resolution	The time it takes to resolve a fault (classified by severity)	Percentage of faults resolved within target timescale (by severity)	Identifying any trends in variances from target timescales between RSPs

6.1.4.2 Wholesale service performance

Section 5 of the Technical Report also describes the likely wholesale service requirements and associated service levels that will be required of the Contractor in respect of its service performance. The table below summarises the main service levels for bitstream services, and explains how each service level might be configured and measured within the Contract. The minimum standards of service that are likely to be required in respect of each service level are set out in the Technical Report.

Figure 6.3: Example service levels for bitstream service performance



Service Level	Description	DCENR aggregate measures across the IA (examples)	DCENR consistency / EoI measures for the IA (examples)
Downlink speed	Speed of broadband service when downloading content	Percentage of end users receiving minimum performance standard (speed and % of time)	Identifying any trends in variances between RSPs (e.g. may indicate issues re network condition)
Uplink speed	Speed of broadband service when uploading content	Percentage of end users receiving minimum performance standard (speed and % of time)	Identifying any trends in variances between RSPs (e.g. may indicate issues re network condition)
Latency	Time it takes for a data packet to travel from end-user to server and back to end user	Latency for IA will be measured in accordance with tests defined in the contract	Identifying any trends in variances in latency between RSPs (where separately identifiable)
Jitter	A measure of the variation in latency	Jitter for IA will be measured in accordance with tests defined in the contract	Identifying any trends in variances in jitter between RSPs (where separately identifiable)
Packet loss	Failure of one or more data packets to arrive at destination	Packet loss for IA will be measured in accordance with tests defined in the contract	Identifying any trends in variances in packet loss between RSPs (where separately identifiable)
Maximum utilisation of backhaul link	Utilisation of backhaul to not go above the maximum % (triggers an upgrade in backhaul capacity)	Backhaul link utilisation measure for IA	N/A
Service availability	Percentage of time that broadband service is fully available to end users and not in state of failure or outage	Service availability range for the intervention area (lowest, highest & weighted average)	Identifying any trends in variances between RSPs

6.1.5 Other permitted wholesale services

The Contractor may be allowed, under certain conditions and with the Department's consent, to offer and provide wholesale services in addition to the minimum wholesale services described above. Additional wholesale services will only be permitted when they do not contravene the State Aid rules or other prevailing regulatory policy as determined by ComReg. The types of services that may potentially be offered include, among others:

- wholesale active access services that support higher-speed broadband services than those required by the Department;
- wholesale leased lines;
- wholesale PSTN equivalent voice access;
- wholesale multicast services;
- sub-loop unbundling including co-location of cabinets and cabinet co-location; and.
- services for businesses e.g. very high-speed symmetrical services.



It should be noted that although sub-loop unbundling is named above as another permitted wholesale service it is not included in the minimum set of wholesale services as there is currently no demand for sub-loop unbundling in competitive areas of Ireland, and there is no indication that such demand will exist in the Intervention Area.

Additional wholesale services should be provided when there is reasonable demand for them in the market. Such demand must be met without the support of additional public-sector funding under the Contract. This approach is in line with ComReg's general approach to regulation for enabling new wholesale services to be introduced into the market to support healthy market competition.

The Contractor may also proactively develop, offer and provide additional wholesale services depending on their view of likely future market demand and supported by a commercial business case i.e. also without the support of additional public-sector funding.

The Contractor must ensure that the wholesale network delivering the minimum set of wholesale services must be designed so that it will be commercially and technically possible to upgrade the network with the required quality and functional network features to deliver the other permitted wholesale services without further public-sector investment. Upgradeability is imperative for future-proofing the NGA wholesale network.

6.1.6 Points of handover

The point of handover (PoH) is a key wholesale network element that is essential for providing wholesale access services to RSPs since it is the location where the RSP's network connects to the intervention infrastructure. The location of the PoH's must allow the cost-effective connection of a wholesale service to any existing RSP's network infrastructure, while also being proportionate, in terms of any public-sector subsidy, and non-discriminatory towards different types of RSP.

The requirements in terms of number and location of PoH for passive services and active services will be considered with short listed Bidders at the dialogue stage of the Procurement, noting that different Bidders may have different proposals for PoH locations. Such dialogue will also examine the potential for a super bitstream PoH that would allow access to all premises in the Intervention Area via one PoH location. The PoH for virtual unbundled access (VUA) will be each aggregation point where the Contractor has active access equipment (e.g. exchanges, cabinets or wireless access points).

6.1.7 Equivalence of input management platform

To support the operations of the Contractor on an open-access, non-discriminatory basis, the Contractor will be required to establish an equivalence of inputs (Eol) platform. The Eol platform effectively forms the Contractor's operational support system (OSS) and will allow RSPs and third-party WSPs to manage wholesale broadband services on a non-discriminatory basis.

The Eol platform will comprise different RSP interfaces so that all types of RSPs and third-party WSPs can conveniently and cost-effectively order and manage their customers' services. The Eol platform will be designed according to the Tele-Management Forum's enhanced Telecoms Operational Map (eTOM) and will provide support to the RSPs and third-party WSPs for the following key functional areas:

- operational readiness support;
- fulfilment;
- assurance; and
- billing.

If as a result of this procurement Contracts are awarded for two Single Area Lots, the Department will wish to provide RSPs and third party WSPs with a Unified Wholesale Gateway platform to order and manage their services. This is to lower barriers to entry into the market, especially for small RSPs. The basis on which the Unified Wholesale Gateway platform will be developed and deployed will be discussed in dialogue with the short listed Bidders at the next stage of the Procurement.



While this may come at a cost, it is not expected to be material compared to the cost of the intervention itself and when taking account of the competition benefits for retailers and consumers.

Further details of the requirements of the Eol platform are set out in section 5 of the Technical Report.

6.2 Wholesale pricing specification

6.2.1 Pricing approach in Contract

The pricing of the wholesale services offered by the Contractor is key to supporting effective downstream retail competition and to the policy objective of delivering high speed broadband services to end users that are of comparable affordability to those available in the rest of Ireland. The prices that the Contractor may offer will, therefore, be subject to a maximum wholesale price set pursuant to the Contract.

The Department's current proposed methodology for establishing the prices for the Contractor's wholesale services is to limit them to the levels of the most comparable regulated wholesale products in Ireland. Where possible, prices are capped to the levels of the most comparable regulated prices outside of the Intervention Area. Where direct comparisons do not exist, the closest related regulated price will be used with adjustments for relevant cost differences. Further details are set out in section 8.4 of the Intervention Strategy.

Bidders will be required to submit wholesale products priced in line with the above principles. Any wholesale pricing proposed by bidders that is above the maximum allowed wholesale prices will not be permitted. Wholesale prices below the maximum allowed will be permitted, however this should not give rise to a requirement for additional subsidy over and above that required when using the maximum allowed prices (subject to review and advice from ComReg).

Table 6.4 below sets out how wholesale prices will be used as a basis for establishing a maximum wholesale price for certain products on the basis of the above.

Table 6.4: Wholesale service pricing approach

Wholesale service	Maximum wholesale price
Duct Access	To be determined by ComReg ³²
Poll Access	eir reference offer ³³
Unbundled Fibre access	Based on eir's wholesale FTTH price offer ³⁴
Radio tower and masts access	No known regulated reference offer – cost based prices need to be calculated
Dark Fibre access	No known regulated reference offer – cost based prices need to be calculated ³⁵
Virtual unbundled access (fixed or wireless)	eir reference offer – price list ³⁶
Bitstream access (fixed or wireless)	eir reference offer – price list ³⁷

³² To be determined by ComReg according to the principles set out in Remedies for Next Generation Access Markets, 2013

³³ Under development and should be available in the coming months

³⁴ http://www.eircomwholesale.ie/news/FTTH_Pricing/

³⁵ Intervention Strategy highlights that eir has a regulatory obligation to offer dark fibre in very specific circumstances, but the Department is not aware of an existing reference offer (see https://www.comreg.ie/_fileupload/publications/ComReg1227.pdf)

³⁶ eir's Bitstream Service Price List, http://www.eircomwholesale.ie/Reference_Offers/?selectedtab=proposals

³⁷ eir's Bitstream Service Price List, http://www.eircomwholesale.ie/Reference_Offers/?selectedtab=proposals



Wholesale service	Maximum wholesale price
Interconnection services	eir reference offer – price list ³⁸
Transmission capacity	eir offer for bitstream backhaul ³⁹

The Intervention Strategy does not propose to adjust the maximum wholesale prices to reflect any differentials in the costs of wholesale service provision between the Intervention Area and the rest of the country. This is appropriate for the following reasons:

- one of the objectives of the intervention is to bring about the provision of high speed broadband services in the Intervention Area that are similarly affordable to the rest of the country, thus addressing the “digital divide” identified in the National Broadband Plan. The application of the same price caps for wholesale access in the Intervention Area as the rest of the country provides the conditions for a retail market to emerge that can deliver similar prices to end-users; and
- whilst the unit costs of wholesale service provision in the Intervention Area may exceed those in the rest of the country, the proposed wholesale prices should not reflect these differences in costs. The purpose of the public subsidy is to reduce the costs faced by a commercial operator in the Intervention Area thereby enabling services to be priced at a similar level to the rest of the country.

At the next stage of the Procurement process, short listed Bidders will be required to submit wholesale prices for each of the wholesale services. These prices should adhere to the pricing principles set out by the Department (the outline of which is provided in this section) which will be confirmed in the Procurement documentation at that stage and the onus will be on Bidder's to demonstrate that this is the case. The Bidder will be required to provide supporting evidence that demonstrates, to the Department's satisfaction, the compliance of their wholesale prices with the pricing principles. Such evidence shall be subject to review by the Department and by ComReg. The Department reserves the right to require a Bidder to adjust its prices in its Solution to ensure adherence to the pricing principles. A Bidder's Final Tender may be rejected if it does not comply with the pricing principles set out in the Procurement documentation for Final Tenders.

Subsequent to the award of the Contract, the maximum wholesale prices will be subject to change, for example as a result of a review by ComReg of the regulated wholesale products in Ireland. The Contractor will, therefore, be required to respond to any such change in the maximum wholesale prices so as to ensure that the Contractor's wholesale prices are always at or below the latest price for the relevant maximum wholesale price in accordance with the Contract. The Contract will include provision for periodic review of the wholesale prices offered by the Contractor in order to verify compliance with the maximum wholesale prices. For regulated entities, price reviews tend to take place every 3-5 years. It is expected that such a review process will take place during the contract period to ensure price structures and levels in the Intervention Area remain appropriate and in line with the objectives of the Intervention. This gives market participants certainty and consistency over prices for a period of time and also provides assurance to the winning bidder that pricing in the Intervention Area will be kept in line with the non-Intervention Area and the market generally.

6.2.2 Additional pricing measures

If the Contractor is part of a vertically integrated operator or group which also supplies retail services, the Contract is likely to impose two further tests to prevent anti-competitive pricing behaviour by the Contractor. These relate to the margin that the Contractor is required to maintain between its wholesale prices and the retail price charged by the retail operation and the pricing of retail bundles.

6.2.2.1 Retail margin test

³⁸ eir's reference interconnect offer price list, <http://www.eircomwholesale.ie/WorkArea/DownloadAsset.aspx?id=1155>

³⁹ eir's Bitstream Backhaul Service Industry Process Manual, <http://www.eircomwholesale.ie/WorkArea/DownloadAsset.aspx?id=2152>



The margin that the Contractor will be required to retain between retail and wholesale prices should correspond to the regulated margin⁴⁰ that ComReg requires in its regulation of high speed broadband services in Ireland.

6.2.2.2 Retail bundling price test

The price of any retail bundles offered by the RSP that is associated with the Contractor must be replicable by competitors using its wholesale products as inputs. In this respect, the Intervention Strategy recommends that retail bundles should pass a test similar to the 'net revenue test'⁴¹ ComReg has specified under regulation. In essence, this test ensures that the total price of the retail bundle covers the total costs of providing the bundle. The onus would be on Contractor to demonstrate to the Department's satisfaction that its proposed retail bundles pass this test.

6.2.3 Pricing principles for other permitted wholesale services

It is currently envisaged that the following principles shall apply to the pricing of other permitted wholesale products:

- The prices of these permitted wholesale services should reflect the efficient incremental costs of providing these additional services incurred by the Contractor (in addition to the costs associated with providing the required wholesale access products).
- The calculation of these prices should take into account that part of the costs incurred in deploying the network infrastructure is recovered through the public subsidy and, therefore, not all of the costs need to be recovered through wholesale prices.
- The onus will be on the Contractor to demonstrate to the Department's satisfaction that the pricing of its other permitted wholesale services satisfies these principles.

6.2.4 Transparency

The pricing principles described above are reliant on Government having full transparency of the costs of providing the wholesale network and services. Adherence to the principle of transparency will be an essential requirement of the Contract.

6.3 Non-Discrimination

An objective of the wholesale intervention is to create a network that gives a level playing field for RSPs to compete effectively at the retail level to the benefit of consumers. In the event that the Contractor is vertically integrated, it may have incentives to discriminate in favour of its own retail arm, to the detriment of effective retail competition. The same concern applies – although arguably to a lesser extent – in the event that the Contractor is owned or partially owned (as opposed to vertically integrated) by an operator providing retail services (or vice versa).

The State Aid Guidelines state that “the subsidised network must offer access under fair and non-discriminatory conditions to all operators who request it”. The State Aid Guidelines also state that if the national broadband intervention operator is vertically integrated “adequate safeguards should be put in place to avoid any conflict of interest, undue discrimination towards access seekers or content providers and any other hidden indirect advantages”.

In line with the Intervention Strategy, the Contract will incorporate a number of requirements to safeguard competition and non-discrimination such as those outlined below:

- **Open Access** - the State Aid Guidelines define open access as a requirement for the infrastructure to “provide access seekers with all possible forms of network access”. It also includes the need to provide ‘reasonable’ access to component parts of the wholesale products

⁴⁰ See, ComReg's *Proposed remedies for Next Generation Access Markets setting out its current position relating to the retail margin* <https://www.comreg.ie/fileupload/publications/ComReg1227.pdf>

⁴¹ ComReg, *Price Regulation of Bundled Offers* <http://www.comreg.ie/fileupload/publications/ComReg1314.pdf>



and services, for example 'passive' network elements such as land, towers, ducts, buildings, and dark fibre. These requirements will be addressed through the wholesale service specification described in section 6.1 above.

- **Price control** - the State Aid Guidelines also state that the terms of wholesale access to the intervention area network should be in line with the existing wholesale regime in place in the country. The price controls included in the Contracts will be consistent with these principles and with the policy objective of delivering high speed broadband services to end users in the Intervention Area that are of comparable affordability to those available in the rest of Ireland. The price controls proposed for the Contracts are discussed in section 6.2 above.
- **Transparency** - ComReg has defined transparency as the requirement that all forms of information that are essential for operators who are seeking to use wholesale products in the construction and sale of retail services is available in a timely and appropriate manner. This includes the need to publish, for example, product descriptions, associated pricing, expected and actual performance metrics, to a level that the market requires. It also includes the need for network related information, rollout plans, product availability etc., to be available in a timely manner to all operators. Equality of treatment in terms of access to and provision of such information will be a key requirement of the Contracts and will be incorporated within the service levels established for monitoring the Contractor's performance in dealing with requests for new wholesale access products as described above.
- **Accounting separation** - the State Aid Guidelines recommend accounting separation (i.e. separate financial records, statements and accounts for the Contract / assets), which is designed to provide both separation and transparency in relation to the cost and revenues directly attributable (in whole or part) to the intervention (i.e. accounting separation of Project operation and operations in commercial areas) and also in relation to the respective costs and revenues, levels of profitability and transfer charges of the wholesale and retail units of an integrated provider (i.e. accounting separation between wholesale and retail operations). Accounting separation will be a requirement within the Contract and is consistent with ComReg Decision D08/10. It will be supplemented in the Contract by a specific requirement for the operator to comply with transparency standards, in order to provide the Department with the transparency of deployment, operational, financial and other management information that will be required to effectively govern the Contract as described in the Governance Report.
- **Equivalence of Inputs** - the key principle of equivalence of inputs ('EoI') involves ensuring that all RSPs have access to the same wholesale services as inputs for their retail outputs, and that they all access these services on the same terms and through the same systems (including any RSP that may be integrated with or linked to the wholesale service provider). The EoI requirements within the Contract will include a requirement to provide an EoI management platform, which will provide a level playing field for RSPs by aligning the terms and, importantly, the channels through which wholesale services are procured, fault repairs are managed, etc. This issue is discussed in detail in Section 5 of the Technical Report.
- **Monitoring of operational performance** – as described in section 6.1 above, the Department will wish to ensure that the Contractor is operating on an EoI basis and is not discriminating between RSPs. Accordingly, in addition to monitoring the overall performance of the Contractor in relation to KPIs such as the availability of the operator's equivalence of inputs (EoI) platform, enablement of RSPs, broadband service ordering, engineering support, broadband service provisioning, broadband service testing and fault resolution, the Department will also closely examine the consistency of the Contractor's operational performance across RSPs in these areas.
- **Management incentives** – the Contract will require that there is a separate management team responsible for the delivery of the wholesale intervention that are not directly or indirectly incentivised, through their terms and conditions, performance measures, remuneration or any other way, to act in a discriminative manner in the deployment and operation of the wholesale network and services. It is also intended that the culture of the Project operation should be focused on facilitating open access and competition (which does not naturally align with a



vertically integrated operation). Any divergence from this requirement will only be in exceptional circumstances where it can be justifiably demonstrated that taking such an approach would not be value for money for Government due to its evidenced high cost or taking such an approach is demonstrated to be impractical or where it simply cannot be implemented for legal or other reasons.

- **Marketing and branding** - in order to address the concerns around marketing and branding the Contractor will also be required to use a neutral brand for the intervention (i.e. unrelated to the branding of its retail arm) and have separate marketing and branding activities. The fine detail of this requirement will be set out discussed with the short listed Bidders at the dialogue stage. Any divergence from this requirement will only be in exceptional circumstances where it can be justifiably demonstrated that taking such an approach would not be value for money for Government due to its evidenced high cost or taking such an approach is demonstrated to be impractical or where it simply cannot be implemented for legal or other reasons.

In addition, the Department will also include a requirement in the Contract for the Contractor (or, at the Department's absolute discretion, a wholesale entity responsible for operating the network and making decisions regarding access and related terms) to be established as a separate legal entity in order to provide additional assurance and transparency in relation to the Contractor's adherence to these non-discrimination requirements throughout the Contract term. Any divergence from this requirement will only be in exceptional circumstances where it can be justifiably demonstrated that taking such an approach would not be value for money for Government due to its evidenced high cost or taking such an approach is demonstrated to be impractical or where it simply cannot be implemented for legal or other reasons.

It will be a requirement of the Contract that the Contractor puts in place suitable arrangements to provide assurance and evidence to the Department that the Contractor is, and will continue throughout the Contract term to be, compliant with these requirements for non-discrimination. The non-discrimination requirements and service levels incorporated in the Contract will be monitored by the Department and any under-performance will be addressed through the service credit and remedial plan regimes described in the Governance Report.

It is, therefore, envisaged that the governance arrangements for non-discrimination will include:

- a requirement for the Contractor to report its performance against these requirements;
- a requirement for the Contractor to formally prepare and submit an Annual Statement of Compliance with the non-discrimination requirements of the Contract;
- a role for ComReg in monitoring the performance of the Contractor in areas that align with ComReg's role in regulation and its on-going engagement with market participants (including industry forums), in particular open access, price controls, transparency and equivalence of inputs. ComReg would report to the Department any findings of non-compliance by the Contractor for consideration by the Department;
- an option for the Department to call for an independent assurance review of non-discrimination measures put in place by the Contractor; and
- enforcement actions and remedies to be progressed by the Department, including the application of service credits where applicable.

6.4 Retail service specification

6.4.1 Minimum standards for retail services

The Contract will place an obligation on the Contractor to only provide access to an RSP where that RSP commits to the Contractor that its retail products will meet the minimum standards set for the intervention. The likely minimum performance standards for the retail service are set out below and are described in further detail in the Technical Report.



Table 6.5: Minimum performance standards for retail services

Performance parameter	Required performance	Rationale (see Technical Report)
Minimum download speed	30Mbit/s	Department's objectives, and based on DAE 2020 target
Minimum upload speed	6Mbit/s or twice the maximum upload speed of existing broadband services in the Intervention Area, whichever is greater	Department's objectives, and based on: <ul style="list-style-type: none"> ■ analysis of existing commercial products, benchmark usage patterns and feedback from CFI ■ State Aid Guidelines
Maximum latency (one-way)	50ms	Industry benchmarks
Maximum jitter	50ms	ITU-T Y.1541 QoS Class 0
Maximum packet loss	≤0.1%	ITU-T Y.1541 QoS Class 0
Minimum service availability	99.95%	Industry benchmarks

The above requirements are specified for the broadband connection between the customer premises NTE and the RSP's network demarcation point that connects the RSP's network to the Internet.

In order to ensure that the Department's objectives are met, a contractually binding access condition will be placed on each RSP by the Contractor, requiring the RSP to offer a minimum broadband retail service with the performance specifications set out above. The Contractor will provide a minimum set of wholesale services, comprising passive and active access and backhaul services, as described in section 6.1, connecting the Intervention Area premises to the RSP's network via a PoH that will support the performance required of the minimum retail service.

The Contractor will be required to demonstrate its compliance with this obligation, which will involve it demonstrating to the Department's satisfaction that the RSPs are complying with the minimum standards. The evidence for this compliance is expected to be through monitoring the products and standards of service offered by RSPs to end-users in the Intervention Area.

The Technical Report describes how the operator might monitor each RSP's compliance with the minimum standards. The Department will enter into dialogue with Bidders during the Procurement on their proposals for a proportionate and effective approach to monitoring RSP compliance which will reasonably ensure that end users receive the standards of service that have been set for the Project.

6.4.2 Retail service safeguard

As a range of high quality wholesale services capable of delivering high speed broadband services to retail customers will be available on a fair and non-discriminatory basis in the Intervention Area, it is expected that there will be competition between RSPs and good levels of service and choice for end customers. In the unlikely event that this does not materialise (e.g. where there are some end customers in the Intervention Area who are not able to obtain the retail service they require), the Department may in such circumstances require the Contractor to facilitate the provision of a retail service to those end customers. The Contractor is not required to provide this retail service itself, but may contract with one or more third party retail service providers for the provision of retail services in such circumstances. The retail service will be required to meet the minimum standards for retail services described above.

6.5 Deployment specification

6.5.1 Target timescale for deployment



The target is to complete the initial roll-out of the network within five years, so that 100% of premises are passed by the end of the fifth year following Contract award. The Department's definition of premises passed is:

- **Premises passed for wireline network** - Premises are deemed to be passed in principle when the wireline network has a distribution point sufficiently close to that premises such that NGA Broadband Services can be provisioned for that premises within the service provisioning targets outlined in the Technical Report and at the standard connection charge as described in section 5.7 of the Broadband Strategy for Ireland, published by PwC. This definition excludes premises that cannot be connected without further installation of substantial additional equipment or infrastructure, such as feeder and distribution cables, to reach the boundary of these premises.
- **Premises passed for wireless network** - Premises are deemed to be passed, when premises for which the wireless network has sufficient signal quality at that premises such that NGA Broadband Services can be provisioned for that premises within the service provisioning targets outlined in the Technical Report and at the standard connection charge as described in section 5.7 of the Broadband Strategy for Ireland, published by PwC. This definition excludes premises that cannot be connected without further installation of substantial additional equipment or infrastructure, such as antenna, active radio equipment or telecommunication masts to enable sufficient signal quality to be made available at these premises.

The Department will not dictate the sequencing of the deployment within the Intervention Area. The deployment strategy (in terms of phasing of premises and areas) will be left to Bidders to propose, with the objective to achieve the interim deployment milestone (60% of premises in the Lot Area to be covered by the end of Year 3) and the end-of-deployment milestone (100% of premises in the Lot Area to be covered by the end of Year 5).⁴² Whilst it would be preferable for the Contractor to address strategic connection points first where this is feasible, the Department recognises that this may be un-economic or it may adversely impact deployment timescales. The Department reserves the right to identify priorities for deployment within its requirements at the dialogue stage.

It is currently envisaged that the award criteria and evaluation methodology will favour Bidders that are able to contractually commit to achieving these deployment milestones. However, the Department also recognises that the deployment milestones are ambitious and, accordingly, it is envisaged that Bidders that commit to deployment timescales that come close to achieving these milestones will not be unreasonably disadvantaged through the award criteria and evaluation methodology. The award criteria and evaluation methodology will be shared with the short listed Bidders at the next stage of the Procurement.

6.5.2 Connecting existing premises

Whilst connecting premises on demand is the approach that is typically adopted by operators around the world, Bidders will be able to propose their own strategy for connecting premises. The Department will, however, require Bidders to propose demand stimulation measures such as advertising campaigns that will be undertaken before the network is built in order to generate end user demand in advance of deployment to allow for an efficient deployment of the final connection during network rollout.

The Contractor will likely be required to meet, as a minimum, the following service provisioning timescales for existing premises in the Lot Area:

- connection of existing premises at time of network rollout (pre-built):
 - live service to be fulfilled, for the vast majority of premises (percentage to be defined at the dialogue stage of the Procurement), within 2 weeks of the premises being passed by the network
- connection of existing premises after network rollout (on demand)

⁴² For certainty, the Lot Area for the Combined Bid Lot is the total Intervention Area (i.e. both southern and northern).



- % of lines to be installed and provisioned within 2 weeks of request: 80%
- % of lines to be installed and provisioned within 4 weeks of request: 95%
- % of lines to be installed and provisioned within 8 weeks of request: 100%

The feasibility of these service fulfilment time thresholds will be tested with Bidders during the Procurement.

As set out in section 6.2 above, wholesale prices should be capped at the level of the most comparable regulated wholesale products in Ireland. This requirement includes connection charges to existing premises within the Intervention Area.

Accordingly, the Department intends that the prices end users have to pay for connecting their premises is similar to those outside of the Intervention Area. An acceptable wholesale standard connection charge is considered to be the NGA bitstream connection charges currently charged by Openeir.⁴³

6.5.3 Connecting new premises

The Contractor must satisfy any reasonable request for connection to the Project network from all new premises that are built during the Contract term after the award of the Contract. The Contractor will be required to consider all requests for connection as *reasonable* if the expenditure involved in connecting premises is below a threshold cost as described below.

Short listed Bidders may be required to stipulate within their Solutions and Final Tenders the threshold cost (if any) up to (but not beyond) which they believe it to be reasonable to connect new premises (i.e. the cost which will be fully funded by the Contractor and not paid by the end-user). It is currently envisaged that Bidders with lower cost thresholds for new premises will be favoured by the award criteria and the evaluation methodology. The award criteria and evaluation methodology will be shared with the short listed Bidders at the next stage of the Procurement. Alternatively, the Department may wish to set the threshold in order to ensure that there is consistency between Lots.

The threshold cost bid by the Preferred Bidder at Final Tender stage or, alternatively, that is set by the Department during the Procurement process for a Lot will become the threshold applicable to new premises in the Lot Area covered by that Lot. Accordingly, new premises for which the wholesale cost of connection is greater than the threshold will be required to contribute to the connection cost (assuming they wish to have a connection), paying the difference between the actual cost of the wholesale connection and the threshold set by the Contractor (unless that additional cost is absorbed by the RSP). The Contractor must, therefore, also satisfy any such request for connection to the Project network where the requestor is willing to pay the difference between the actual cost of the wholesale connection and the threshold set by the Contractor.

The Contractor will likely be required to meet, as a minimum, the following service provisioning timescales for new premises in the Lot Area:

- connection of new premises at time of network rollout (pre-built):
 - live service to be fulfilled, for the vast majority of premises (percentage to be defined at the dialogue stage of the Procurement), within 2 weeks of the premises being passed by the network
- connection of new premises after network rollout (on demand)
 - % of lines to be installed and provisioned within 2 weeks of request: 80%
 - % of lines to be installed and provisioned within 4 weeks of request: 85%
 - % of lines to be installed and provisioned within 8 weeks of request: 90%

⁴³ As set out in section 4.1.1 of the following: www.openeir.ie/WorkArea/DownloadAsset.aspx?id=2899. Currently, this charge is €92.39 for a Standalone NGA Non-in situ Access connection.



- % of lines to be provisioned within 12 weeks: 100%

The feasibility of these service fulfilment time thresholds will be tested with Bidders during the Procurement.

The advantage of this approach is that it: (i) limits the costs (per new premise) to be incurred by the Contractor; and (ii) it incentivises home builders to take into account and internalise the additional costs of broadband access resulting from their choice of location.

6.6 Demand stimulation

The Department will use the Procurement process to obtain and evaluate Bidders' proposals in relation to how they will stimulate end-user demand in the Intervention Area. Examples of potential demand stimulation initiatives are presented in section 12 of the Intervention Strategy.

The commitments made by the Preferred Bidder on each Lot will be captured within the Contract and the Contractor will be held to account for the delivery of those commitments. It is envisaged that the commitments will, where relevant, be captured in measurable service levels (e.g. a specified activity to be completed within a defined timescale) with the possible application of service credits for failure to meet such service levels and the Contractor's performance in delivering the commitments will be monitored by the Department.



7 Intervention Contract and governance

7.1 Draft contract

The Department is preparing a draft Contract and schedules that will be provided to short listed Bidders at the next stage of this Procurement. The terms and conditions of the draft Contract and schedules will be subject to amendment as appropriate during the competitive dialogue process in order to meet the specific needs of this Project and the Solutions and Final Tenders proposed by Bidders.

The Contract will set out the terms and conditions pertaining to the technical, commercial, financial and legal requirements for the delivery of the national broadband intervention. Such requirements will likely include, but not be limited to:

- design and deployment of the network;
- operation of the network and the services;
- wholesale access products and prices;
- providing for retail service providers and retail safeguards;
- performance standards, monitoring, remedial plans, delay payments and service credits;
- non-discrimination requirements including open access, equivalence of inputs, price control, transparency, accounting separation, marketing and branding;
- demand stimulation, future proofing and benchmarking of the services;
- financial matters including financial model, milestone payments, payments of subsidy during operations, claw back, sharing of additional financial benefit, invoicing / claims procedure, State Aid and requirements of ERDF funding;
- governance and key procedures, including governance structure, reporting requirements, audit rights, independent assurance review and change control and dispute resolution procedures;
- term and termination and step-in rights and consequences;
- personnel, premises, equipment and assets;
- subcontracting and supply chain;
- intellectual property, data and confidentiality; and
- warranties, indemnities, liability and force majeure.

Many of these requirements are discussed in previous sections of this PIM, and are discussed further in the reports that have been published by the Department.⁴⁴

7.2 Contract governance

As set out in the Governance Report, the Department plans to establish a robust, cost effective and future proofed model of contract governance for the national broadband intervention, which gives the State assurance that the objectives of the intervention are being fulfilled and that public money is being used efficiently and effectively to deliver the intended benefits of the national broadband

⁴⁴ <http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/Connecting-Communities.aspx>



intervention. The Governance Report outlines the current proposed arrangements for the governance of the Contract(s) after Contract award, which covers four key areas as follows:

- **Contract performance** – monitoring and managing the technical and financial performance of the Contractor in building and operating the wholesale network in accordance with the Contract terms;
- **Contract assurance** – providing assurance during network build and operations that public money is being used efficiently and effectively and that value for money is being secured in the delivery of the planned outputs, outcomes and benefits of the intervention;
- **Market effectiveness** – delivering an effective functioning competitive market that offers effective wholesale access for third party operators (aligned with the portfolio of access obligations laid down in regulation) under fair and non-discriminatory conditions, priced in line with the pricing principles and access conditions set by ComReg, and ensuring that the wholesale network operates in accordance with the State Aid Guidelines⁴⁵; and
- **EC compliance (State Aid & ERDF)** – complying with the EC's administrative, governance and reporting requirements for State Aid and ERDF.

The main activities associated with each of these governance areas are summarised in the figure below and are described in more detail within the Governance Report.

Figure 7.1: Key areas of contract governance

	Build Phase	Operating phase
Contract Performance	<ul style="list-style-type: none"> ■ Monitoring network build against: <ul style="list-style-type: none"> – Planned milestones – Forecast costs ■ Managing changes to: <ul style="list-style-type: none"> – Intervention area – Network design & build plans ■ Administering & enforcing: <ul style="list-style-type: none"> – Subsidy payments – Clawback mechanism – Remedies for delays 	<ul style="list-style-type: none"> ■ Monitoring: <ul style="list-style-type: none"> – Wholesale operational performance against KPIs – Wholesale service performance against KPIs – Operator's monitoring of RSPs – Operator's demand stimulation activities – Future proofing & investment commitments ■ Administering & enforcing: <ul style="list-style-type: none"> – Subsidy payments – Remedies for substandard performance – Sharing in improved financial performance ■ Managing contractual change during operations
Contract Assurance	<ul style="list-style-type: none"> ■ Comparative analysis of network build costs ■ Monitoring of commercial deployment (actual and planned) against intervention area map 	<ul style="list-style-type: none"> ■ Comparative analysis of operating costs and revenues ■ Managing assurance processes such as audits and Independent Assurance Reviews during contract term ■ Supporting external reviews, for example by CAG ■ Monitoring, reviewing and evaluating intervention outputs, outcomes and benefits
Market Effectiveness		<ul style="list-style-type: none"> ■ Monitoring: <ul style="list-style-type: none"> – Non-discrimination of RSPs including EoI ■ Managing / overseeing processes relating to: <ul style="list-style-type: none"> – New wholesale access products & prices – Changes to wholesale access product prices – Periodic review/benchmarking to non-IA services
EC Compliance	<ul style="list-style-type: none"> ■ Managing the monitoring, reporting and compliance processes for State Aid ■ Managing the monitoring, reporting and compliance processes for ERDF 	

⁴⁵ EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01)



The proposed Contract governance arrangements will be further defined within the procurement documentation (including the draft Contract and schedules) that is issued to short listed Bidders at the next stage of this Procurement. These Contract governance arrangements will be subject to dialogue and refinement with short listed Bidders during the Procurement in order to address the specific needs of this Project and to take account of the specific detail of the Solutions proposed by Bidders. Acceptance of the Contract governance arrangements will be a precondition of the award of Contract.

7.3 Contract term, termination and end of term protections

7.3.1 Contract term

It is envisaged that the Contract will have a contract term of 25 years. This is consistent with the recommendations of the Intervention Strategy and takes account of the responses to consultation, the useful life of the assets and the requirement for the intervention to provide certainty of services for the long term.⁴⁶

7.3.2 Termination and consequences of termination

The Contract will include rights for the Department to terminate the contract in certain circumstances including, for example, in the event of material or persisting Contractor default, or in the event of insolvency of the Contractor. In a Commercial Stimulus Model Contract that is subject to State Aid rules, the consequences of termination are complex and could include:

- the Department not being required to pay to the Contractor any of the remaining subsidy payments (including any retention or any capital related subsidy remaining to be paid);
- an obligation on the Contractor to continue to provide the contracted services for the proportion of the network that is completed at the time of termination (see State Aid point below);
- the parties consulting with the European Commission to ascertain the extent to which any public subsidy paid under the Contract is rendered unlawful State aid as a result of the early termination of the Contract (which may result in the application of certain ongoing requirements in respect of the network following the early termination of the Contract, as described above); and
- the Contractor being required to repay to the Department all, or a proportion of, the subsidy payments paid to the Contractor up to the time of termination.

In addition, the Department is likely to require that the network is designed such that, in the event of contract termination or an event necessitating Government step-in, Government is able to step-in to operate the network or have the network operated by another operator (e.g. through the acquisition of the assets (taking account of subsidy paid) or the payment of access charges). The Contract will, therefore, need to provide appropriate exit arrangements that facilitate the continued provision of services in the event of early termination or step-in. This is likely to include contractual provisions relating to the procurement of a replacement supplier, the maintenance of asset registers, rights to use assets, rights to acquire assets, knowledge transfer, contract transfer and ongoing use of the operator's intellectual property rights. This will provide additional protections for Government, particularly in respect of an insolvency situation (when Government cannot rule out that it may be unable to recover all of the subsidy payments it has paid to the Contractor).

7.3.3 End of term protections

The Department's concerns over what happens following the end of the Contract term primarily relate to:

⁴⁶ It is not expected that the Contract term will be changed during the Procurement to a longer or shorter term, though the Department does reserve the right to do so within a range of a 20 – 30 year term if it considers it to be necessary to successfully deliver the Project.



- ensuring the full economic value of the subsidised investment in the wholesale network is realised, either during the Contract term or, where the useful economic life of assets extends materially beyond the Contract term, following the end of the Contract term; and
- wholesale access infrastructure and products continuing to be available following the end of the Contract, so that end users in the Intervention Area can continue to access a similar range of high quality NGA broadband services and at similar prices to those outside the Intervention Area.

The Department's approach to addressing these concerns will depend on the Ownership Model that is taken forward to the competitive dialogue stage as described in section 4.1 and 5.2 above.

If the Commercial Stimulus Model (in which the assets remain in the ownership of the Contractor following the end of the Contract term) is selected the Department may seek to address its concerns in a number of ways, which could possibly include the following:

- the State intervention is designed to stimulate a wholesale network operation (including core infrastructure) and retail service provider market that is commercially viable, sustainable, attractive and competitive in the long term, and that this will provide commercial incentives for the Contractor to continue the wholesale network operation and maintain performance standards following the end of the Contract. Such incentives should be enhanced through the inclusion of ongoing asset investment and continuous improvement / "future proofing" obligations in the Contract, which should ensure that the wholesale network has economic and commercial value beyond the end of the Contract period, thereby providing a further incentive for the Contractor to continue to provide services following the end of the Contract in order to maximise its return on investment;
- utilising competition at the Procurement stage to incentivise Bidders to include a reasonable estimate of the terminal value that will reside in the network at the end of the Contract term, thereby ensuring that this value is reflected in a reduced level of public subsidy at tender stage and that the Contractor is, therefore, incentivised to maximise the economic value that it derives from the investment in the network (both during and post the term of the Contract);
- potential future changes to the regulations covering NGA broadband services in Ireland, including significant market power (SMP) and universal service obligation (USO) designations. For example, during the Contract term the Contractor could be designated by ComReg as having SMP, and the Contractor would then be regulated by ComReg, which could impose access obligations if they were found necessary and proportionate in accordance with the Irish electronic communications regulatory framework⁴⁷;
- State Aid Guidelines state that access rights to passive infrastructure such as poles and ducts must not be limited in time (i.e. access rights must continue after the end of the Contract term);
- the Procurement process will examine the potential for a small number of key contractual obligations to persist for a minimum period (e.g. 3 years) following the end of the Contract term; and
- the Procurement will also examine the potential for a right for Government to rent or buy network assets for a fair market price that takes account of the subsidy paid by Government and to operate the network following the end of the Contract term in the event that the Contractor does not intend to continue to provide the services in the full intervention area post the end of the Contract.

If the Concession Model is selected, it is envisaged that the Contractor will be required to ensure that the network will be designed and constructed so that ownership and control of the network assets can revert to the Government at the end of the contract period. It is expected that this would give the Government the long term benefits of ownership after the 25 year Contract period and the ability to assure the continued provision of services in line with its policy objectives after the end of the

⁴⁷ See www.ComReg.ie for more information about the Irish electronic communications regulatory framework.



Contract term. In such circumstances the Government is likely to bear the long term risks associated with managing, maintaining and operating the network and ensuring that the network continues to be able to rely on any third party infrastructure to which it is connected. The Government may also bear the risk of future technology obsolescence (i.e. the risk that the returned network is still an efficient and cost effective means of delivering the policy objectives).

7.4 Contract governance and the Ownership Options

The Governance Report referred to in sections 7.2 and 7.3 above has been prepared on the assumption that the Commercial Stimulus Model is selected. If the Concession Model is selected by Government, the model of contract governance proposed by the Department is likely to be similar, but with a number of notable differences during network build and operation. These potential differences are described in section 9 of the Governance Report.

7.5 Optional and Additional Services

This PIM describes the Department's anticipated requirements for the national broadband intervention Project, including the intervention objectives and scope (section 3), the intervention structure (sections 4 and 5), the intervention service requirements (section 6) and the intervention Contract and governance (section 7).

The Department reserves the right to refine, remove or change these requirements, or introduce new requirements, during the Procurement process, and in particular in the Invitation to Participate in Dialogue (ITPD) that is issued to prequalified Bidders at the start of the dialogue stage and subsequently during the dialogue process when the Department will discuss and clarify its requirements with Bidders.

7.5.1 Optional services

As described in various section of this PIM, it is not possible for the Department to be definitive at this stage in relation to every aspect of the requirements and, accordingly, the Department intends to list and categorise as “**Optional Services**” within the draft ITPD any potential new or additional services that the Department can reasonably foresee as being required of the national broadband intervention during the term of the Contract. These Optional Services will include a right for the Department to extend the Intervention Area as described in sections 5.7 and 5.8.1 of this PIM. The Department may also introduce new Optional Services during the course of the dialogue based upon suggestions by Bidders or additional requirements identified by the Department itself.

It is envisaged that the Optional Services will be discussed and refined with Bidders during the competitive dialogue process and the Department will incorporate into the draft Contract and schedules contractual mechanisms to facilitate the call-off of the Optional Services during the term of the Contract.

When required, the Optional Services will be called-off and implemented in accordance with relevant clauses in the Contract, which shall include the change control procedure. Any change to the subsidy provided by Government will be determined by reference to the costs, revenues and profit margins set out in the financial model at contract award and by reference to the financial reports, audit rights and financial transparency obligations set out in the Contract.

Accordingly, Bidders should note that the Contract shall be subject to modification for “Optional Services” without a new procurement procedure, in accordance with the public procurement rules.

7.5.2 Additional services

Bidders should note that there may also be other changes in the scope and/or scale of the services required under the Contracts that could not be identified or foreseen at the time of this Procurement, but which are consistent with the overall nature of the Department's current and future requirements for the national broadband intervention Project.



In such circumstances the Department may seek to agree a modification to the Contract through the change control procedure to facilitate the provision of such services by the Contractor, with any change to the subsidy provided by Government determined by reference to the mechanisms and protections provided in the Contract (as outlined above). It is envisaged that such modifications may be made without requiring a new procurement procedure, in accordance with the public procurement rules.

The Department also reserves the right to use the procedure set out in Article 31(4)(b) of Directive 2004/18/EC.

7.5.3 Options

The Department reserves the right to include options in the Contract. If it decides to do so, this will be discussed further with shortlisted Bidders during the dialogue stage.



8 Procurement Process

8.1 Introduction

As outlined in section 4.3, this Procurement to appoint a Contractor or Contractors to finance, design, build, operate, maintain and exploit a wholesale NGA network (in a manner which, as a minimum, meets the requirements of the Contract) is divided into 6 Lots in total.

The Department has decided that it will short list a maximum of five Bidders in respect of each of the individual Lots.

The Lots are:

■ Ownership Model 1: Commercial Stimulus Model

- Lot 1A: Single Bid (Southern Intervention Area – Commercial Stimulus Model)
- Lot 1B: Single Bid (Northern Intervention Area – Commercial Stimulus Model)
- Lot 1C: Combined Bid (Northern and Southern Intervention Area – Commercial Stimulus Model)

■ Ownership Model 2: Concession Model

- Lot 2A: Single Bid (Southern Intervention Area – Concession Model)
- Lot 2B: Single Bid (Northern Intervention Area – Concession Model)
- Lot 2C: Combined Bid (Northern and Southern Intervention Area – Concession Model)

These include Single Area Lots and Combined Area Lots.

The scope of the Lots, the conditions relating to the submission of Solutions and Final Tenders for those Lots, and an indication of the basis on which Final Tenders for Lots will be evaluated, are described in section 4 of this PIM.

Bidders can submit a PQQ Response for any or all of the Single Area Lots (i.e. any or all of Lot 1A, Lot 1B, Lot 2A or Lot 2B). Bidders can only submit a PQQ Response for, and are only eligible to pre-qualify for, Combined Area Lots in the circumstances set out in section 4.4.

8.2 Overview of procurement process

As explained in section 2.3, the Contracts that are the subject of this Procurement have been designated as a “service concession” as defined in the Public Procurement Directive 2004/18/EC and the European Communities (Award of Public Authorities' Contracts) Regulations 2006. Consequently, that legislation does not apply to this Procurement in accordance with Article 17 of that directive and Regulation 14 of those regulations.

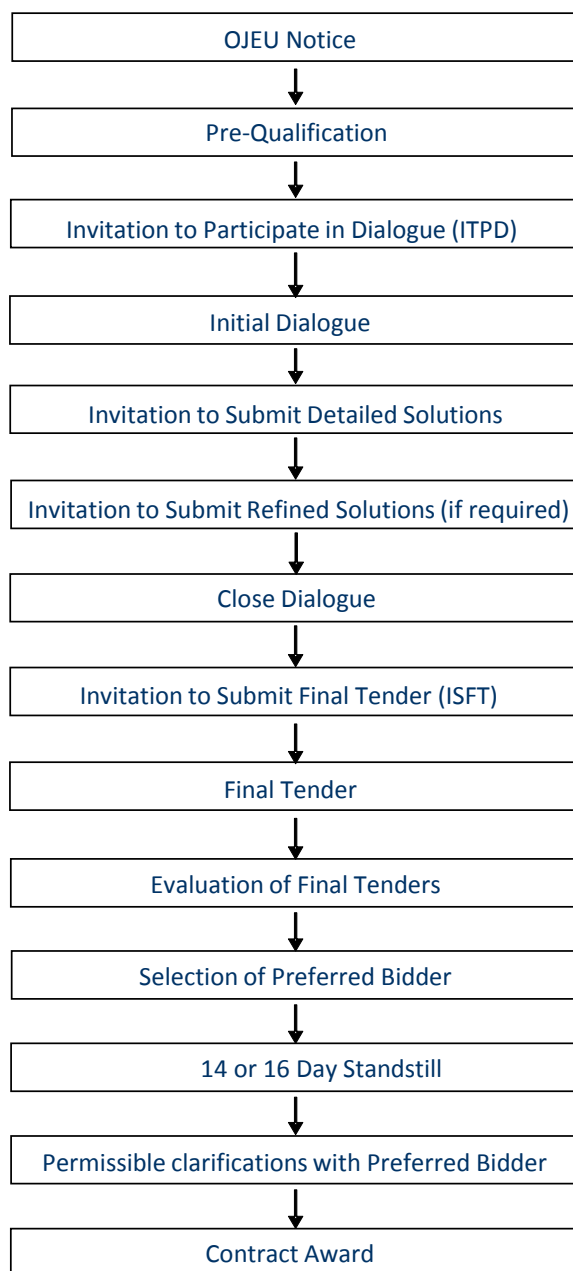
The competitive dialogue procedure is being followed for the purposes of this Procurement.⁴⁸ The figure below gives an indicative outline of the competitive dialogue process proposed for this Procurement.

⁴⁸ However, the Department reserves the right to refine or change aspects of the competitive dialogue procedure such as (by way of non-exhaustive example) by introducing a right to negotiate during the Final Tender and/or Preferred Bidder stages. However, the Procurement shall, even with such refinements or changes, continue to be conducted in line with the spirit and the principles of the Public Sector Directive 2004/18/EC.

It is permitted to deviate from the exact form of the competitive dialogue under the legislation as the Public Procurement Directive 2004/18/EC and the European Communities (Award of Public Authorities' Contracts) Regulations 2006 do not apply to



Figure 8.1: Overview of the procurement process



8.3 Indicative Timetable for Procurement

this Procurement. The Procurement documents for the next stages of this Procurement will outline in more detail the procedure being followed.

All references to the competitive dialogue in the Pre-Qualification Documents should be construed accordingly.



8.3.1 Timetable for initial stages of procurement

The Department wishes to enter into a Contract with a Preferred Bidder / Preferred Bidders as soon as possible and the indicative timetable for the completion of the initial stages of the Procurement process is set out below.

Table 8.1: Indicative timetable for procurement

Milestone	Indicative Completion Date
Initiate procurement / publish contract notice in OJEU	22 December 2015
Pre-Qualification Responses received	29 February 2016
Issue ITPD to short listed Bidders / commence dialogue stage	4 April 2016

The timetable for completion of the subsequent stages of the Procurement process will be set out in the procurement documentation that is issued to short listed Bidders at the start of the dialogue stage. This timetable is dependent on the Government's decision in relation to Ownership Options (as described in section 5.2 above).

It is important from both a time and cost perspective that the timetable is adhered to as closely as possible and the Department will seek to identify and address any timetable issues as early as possible within the Procurement process.

8.3.2 Timetable for this pre-qualification stage

The timetable for this pre-qualification stage is set out below.

Table 8.2: Timetable for pre-qualification stage

Milestone	Time	Date
Initiate procurement / publish contract notice in OJEU	n/a	22 December 2015
Bidder briefing session	14.00 hours	19 January 2016
Deadline for disclosures of conflicts of interest / multiple participation (section 10.7)	12.00 noon	29 January 2016
Deadline for submission of queries (section 9.1)	12.00 noon	15 February 2016
Requested latest date for notification under section 11.2	12.00 noon	15 February 2016
Deadline for submission of Pre-Qualification Responses	12.00 noon	29 February 2016

All times are stated in local Irish time.

8.4 Briefing for Interested Bidders

A briefing session for interested Bidders will take place on Tuesday 19th January 2016 in Bedford Hall, Dublin Castle at 2.00pm. The purpose of the briefing session will be to provide interested Bidders with an overview of the Project and the proposed Procurement process. The briefing session will be limited to potential Bidders only. The briefing session will take place on such conditions as the Department, at its absolute discretion, considers appropriate.

In order to attend the briefing, interested Bidders must register their interest in tendering for the project on www.eTenders.gov.ie and it is only these Bidders that will be permitted to then register their intent to attend the briefing session. Those registered will then be contacted (via www.eTenders.gov.ie) with further details of the briefing session and asked to confirm their intention to attend with the names of their attendees.

Only persons who have registered their interest in this way will be entitled to attend the briefing session. Attendance at the briefing session is limited to a maximum of four persons per Bidder. The



Department reserves the right, at its sole discretion, to refuse admittance to the briefing session to those parties who have not registered their proposed attendance or otherwise.

Bidders should note that the Department will discuss at the briefing session only that information which is set out in this PIM and in the PQQ. The consultations that have taken place leading up to the launch of this Procurement or decisions taken as a result of those consultations (including with respect to the High Speed Broadband Map 2020) will not be discussed at the briefing session.

Information set out in the PIM and PQQ documents shall prevail over any information which may be given at the briefing session unless a contrary position is subsequently confirmed in writing by the Department via eTenders.

The Department reserves the right to refuse admittance to the briefing session, or not to hold a briefing session.

8.5 Procurement Process⁴⁹

As noted above the Department is conducting the Procurement using the competitive dialogue procedure and the Procurement process will consist of a pre-qualification phase, a dialogue phase and a final tender phase which will culminate in the nomination of Preferred Bidder(s).

8.5.1 Pre-qualification

During the pre-qualification phase the Department will seek to evaluate the eligibility, economic and financial standing and technical and professional capability of each Bidder to provide the services required in accordance with the methodology set in section 12 of this PIM.

8.5.2 Dialogue phase

The ITPD will contain a significant amount of additional information about the Project, including the descriptive document / specification, and further details on the process and timing of the dialogue phase.

The award criteria, and the evaluation methodology through which the award criteria will be applied, will be set out in the ITPD documents that are provided to the short list of Bidders that pre-qualify for each Lot at the end of this pre-qualification stage.⁵⁰

It is anticipated that the dialogue process will involve a series of discussions with the selected Bidders to discuss solutions, develop ideas and explore options. This may address all aspects of the Project, including legal, commercial, financial, governance, technical and other areas. The dialogue may take place through meetings (physical or virtual), conference calls, position papers or as otherwise specified by the Department. Any physical meetings will take place in Dublin, Ireland.

In addition, it is anticipated that the dialogue stage will involve the submission of a Detailed Solution which the Department will assess against the stated evaluation criteria.⁵¹

Whilst the Department does not currently intend to down-select Bidders on the basis of their Detailed Solutions (or, if applicable, Refined Detailed Solutions), the Department does reserve the right to eliminate at the Detailed Solutions (or, as applicable, Refined Detailed Solutions) stage a

⁴⁹ The Department reserves the right to introduce a public sector benchmark, shadow bid or similar to assist in the evaluation of Solutions and Final Tenders and/or as a pass / fail benchmark.

⁵⁰ The Department may continually elaborate upon the award criteria during the course of the dialogue phase and for the Final Tender stage by issuing guidance on the Department's interpretation of them or introducing sub-criteria (with or without weightings) or sub-sub-criteria (with or without weightings) and so forth.

⁵¹ Bidders should note that this assessment will not be undertaken against the financial award criteria. The financial award criteria will only be applied at the Final Tender Stage (and possibly, but not necessarily, at the Refined Detailed Solution stage if this is introduced).



Bidder that does not achieve one or more of the minimum score thresholds set out in the evaluation methodology that will be issued to the short listed bidders as part of the ITPD.

Following feedback to Bidders on the quality of their Detailed Solutions, the Bidders will be invited to participate in one or more additional dialogue sessions in advance of being invited to submit a Final Tender to the Department. This may optionally include a Refined Detailed Solution stage in which Bidders will be required to submit a Refined Detailed Solution prior to submission of Final Tenders, though there is no definite plan to do so at this point in time.

8.5.3 Final Tender stage

The dialogue will be declared complete at which stage an ISFT (Invitation to Submit Final Tenders) will be issued.

The Final Tenders will then be evaluated by the Department using the award criteria to identify the most economically advantageous tender in respect of each Lot, in accordance with the process described in section 4.5. The Department reserves the right to hold one or more meetings with each of the Bidders to discuss or clarify any issue relating to their Final Tender.

The Department will first evaluate the Final Tenders submitted for the two Single Area Lots and for the Combined Area Lot for the retained Ownership Model using the award criteria. This will result in provisional preferred tenders for the two Single Area Lots and for the Combined Area Lot.

The provisional preferred tenders for the two Single Area Lots will then be compared against the provisional preferred tender for the Combined Area Lot (which is a tender for the two Single Area Lots combined, i.e. the total Intervention Area) using the award criteria.

The outcome of the evaluation will either be:

- a recommendation to award the Contracts to the preferred tenders for the two Single Area Lots; or
- a recommendation to award the (single) Contract to the preferred tender for the single Combined Area Lot.

The award criteria, and the evaluation methodology through which the award criteria will be applied, will be set out in the Invitation to Participate in Dialogue documents that are provided to the short list of Bidders, for the various Lots, that pre-qualify and are invited to the dialogue at the end of this pre-qualification stage.

8.5.4 Preferred Bidder(s)

Once the evaluation of the Final Tenders is complete, the Preferred Bidder(s) will be notified and closing Contract clarifications between the Department and the Preferred Bidder(s) will begin.

During this period, the Department reserves the right to undertake a verification process with the Preferred Bidder(s) if deemed necessary. The Department also reserves the right to enter into discussions with other Bidder(s) should final clarifications with the Preferred Bidder(s) break down for any reason.

The decision to proceed to Contract award will ultimately depend upon the ability of the Bidders to deliver value for money.

Any appointment as Preferred Bidder is provisional and can be withdrawn.

8.6 Refined Requirements

All statements in this PIM with respect to the Department's requirements in respect of the Project are indicative only in all respects. They are all subject to change. The Department may refine its indicative requirements during the dialogue stage by way of addition, deletion, refinement, modification or in any other way. It can do this with respect to any or all indicative requirements set out in this PIM.



8.7 Disclosure

It is a condition of participation in this competition that the Department may during the competitive dialogue process, at the Department's absolute discretion, reveal to any pre-qualified Bidder any aspects of Solutions proposed or other information communicated to the Department by another pre-qualified Bidder where such Solution or information impacts the Department's requirements and/or results in a clarification that should, treating all Bidders equally, be communicated to all Bidders, except in the event that the disclosing pre-qualified Bidder expressly and specifically requested the Department in writing not to disclose such information and where the Bidder has demonstrated to the satisfaction of the Department that it was justified in requesting such non-disclosure. This may be, for example, on the basis that the Bidder concerned has introduced a particularly novel idea unique to that Bidder which has not been previously or at a later stage alluded to or considered by other Bidders, or which the Department had not already considered.

General statements to the effect that all information is confidential or proprietary will not be permitted. Rather, a detailed, genuine and *bona fide* explanation must be provided justifying the non-disclosure to other pre-qualified Bidders of any specific element of a solution or other information. This is an important aspect of this competition and pre-qualified Bidders will be required to act reasonably and *bona fides* in this respect.

If the Department is of the opinion that it is appropriate to disclose the relevant element of a Solution or other information to other pre-qualified Bidders if the Bidder has stated the Department should not do so, the Department will notify the Bidder accordingly. The Bidder may, in such a case, either withdraw its request or reformulate its justification for non-disclosure within two (2) days of such notification. If the Bidder does not withdraw or reformulate the request within the specified period, or the Department is of the opinion that, notwithstanding the objection of the Bidder, the request has not been adequately justified, the Department may disclose the relevant element of a Solution or other information to other pre-qualified Bidders. The Department's decision is final and binding in this respect.

All Bidders who submit a Response in response to the Pre-Qualification Documents irrevocably and unconditionally accept and agree to this and agree to participate in the competition on this basis. The ITPD may address disclosure in more detail.



9 Queries at Pre-Qualification Stage

9.1 Queries

Bidders may not address queries to, or communicate with, the Department in relation to the Project other than in the manner provided in this section.

Each Bidder must fully satisfy itself as to the nature and requirements of the Pre-Qualification Documents. In addition, if a Bidder considers that any aspect of the Pre-Qualification Documents is not clear or is ambiguous, contain errors or have any queries regarding the scope of the Project, the manner in which the evaluation will be undertaken or any of the selection criteria, Pre-Qualification Minimum Requirements or other requirements will be applied or are properly understood, this must be raised with the Department in accordance with this section.

Any queries should be raised in writing with the Department by registering on www.eTenders.gov.ie and submitting queries via eTenders as soon as possible and, in any event, no later than the deadline for submission of queries specified in table 8.2 above. The Department will use reasonable endeavours to respond to queries.

All such queries received, together with replies and clarifications on the points raised, may be circulated to all Bidders who have requested and obtained the Pre-Qualification Documents. This may be done via eTenders (or otherwise). Bidders should accordingly register via the eTenders website as otherwise they may not receive this information.

The Department may at its absolute discretion (but shall not be obliged to) respond to late queries.

In order to avoid the duplication of queries, Bidders should ensure that all queries are submitted by a single member of the Bidder.

Queries forwarded by letter, e-mail or fax will not be accepted. Verbal queries are deemed not to have been accepted unless they are subsequently submitted via the eTenders website by the deadline set out above and responded to by the Department in writing.

If, as a result of queries/requests, any discussion or other communication between the Department and a Bidder and/or otherwise, the Department is of the opinion that a clarification of and/or amendment to the Pre-Qualification Documents is required to be made and/or additional information is required to be issued, then the Department shall be entitled to do so at any time by notice in writing on the eTenders website or by circulating it otherwise. Bidders who have already requested and obtained the Pre-Qualification Documents and registered via the eTenders website prior to any such amendment, clarification or provision of additional information will be notified in writing accordingly.

The Department does not accept responsibility for any communications issued by it which are missed or not received by a Bidder or for communications issued by Bidders which are not received by the Department. The onus is on Bidders to follow up with the Department if no response is received. The Department may not follow up on out of office or message failure notices received. Accordingly, Bidders should ensure that valid contact details are provided when registering for the e-tenders website and that such emails are monitored.

9.2 Confidential Queries

If a Bidder believes a query and/or the response relates to a confidential aspect of its Response it must mark the query as “confidential”. If the Department, at its absolute discretion, is satisfied that the query and/or its response should be properly regarded as confidential, the nature of the query and its response shall, subject to the following provisions, be kept confidential.

If the Department is of the opinion that it would be inappropriate to answer the query/request on a confidential basis it will notify the Bidder and require the Bidder to either withdraw or reformulate the



query or to raise any objection within 2 days of such notification and state the grounds for its objection. If the Bidder does not withdraw or reformulate the query/request or raise any objection within the specified period, or the Department is of the opinion that, notwithstanding the objection of the Bidder, the query/request is not confidential, the Department may issue the query and its response to all of the Bidders.



10 Bidder Composition

10.1 Financial Resources and Security

By submitting a Response, each Bidder warrants, represents, confirms and agrees that it can finance the Lot or Lots for which it is tendering for the full Contract duration based on the information made available by the Department at this pre-qualification stage.

The Bidder also warrants, represents, confirms and agrees that, should it be awarded the Contract, the Bidder fully intends to deliver every aspect of the Department's requirements in accordance with the terms of the Contract based on the information made available by the Department at this pre-qualification stage.

The Department reserves the right, at its absolute discretion, to reasonably require the successful Bidder(s) / Preferred Bidder(s) as a condition of Contract to procure the provision to the Department of a deed of guarantee, parent company guarantee, performance bond, collateral warranty or other suitable security arrangement to ensure that those resources are properly made available for the performance and completion of the Contract (or a part of it) to the satisfaction of the Department. Such a requirement may apply to the deployment phase of the Project and/or to the operating phase.

A performance bond may, in particular, be required if the subsidy payment profiles and the payment and performance mechanisms (including milestone payments and remedies such as delay payments and service credits) that result from the competitive dialogue with Bidders do not provide the level of incentives and protections that the Department requires of the Contract. The value of the performance bond is not expected to exceed €20 million, and could indeed be significantly less than €20 million.

The Department will set out its requirements in this regard for the selected Bidders for each Lot at the dialogue stage.

By submitting a response to the PQQ and potentially later through the ITPD, Bidders warrant and represent that they can, and irrevocably agree that they will, comply, or procure compliance, as the case may be, with this requirement on reasonable request by the Department.

10.2 Reliance on Resources

A Bidder, or Consortium Member, may where and provided it is appropriate for the national broadband intervention Project, in order to prove it can satisfy the economic and financial standing or technical and professional capability necessary to undertake the Contract, rely on the resources of entities or undertakings with which it is directly or indirectly linked. This is provided, whatever the legal nature of those links may be (including, for example, but not limited to, reliance on a parent company's resources, or the resources of a key subcontractor), the Bidder establishes and provides evidence to demonstrate to the satisfaction of the Department that the Bidder has and will have available to it the resources of those entities or undertakings which are necessary for the performance of the Contract.

For example, a letter from such other entity confirming that it will provide the necessary support may suffice.

The Bidders must also submit a completed PQQ for the entity whose resources are being relied upon in accordance with the instructions set out in section 2 of the PQQ.

The Department reserves the right, at its absolute discretion, to require further assurances in relation to the availability of resources to the Bidder so as to clearly demonstrate that such resources are available to the Bidder and that the Department may have full legal recourse to such resources as if the resources were a part of the Bidder.



If sufficient evidence is not provided, or it is not appropriate for the Bidder to rely on those resources for the Contract, the Bidder (or Consortium Member) will be evaluated based on its own economic and financial standing, and technical and professional capability.

Bidders should note that a contractual commitment in the form of a guarantee, collateral warranty or other agreement may be required at contract execution stage in favour of the Minister from any such supporting entity. By submitting a Response, Bidders warrant and represent that they can, and irrevocably agree that they will, comply, or procure compliance, as the case may be, with this section on request by the Department.

The failure by a Bidder to comply with any such requirement may result in its rejection and elimination from the Procurement.

10.3 Submissions by Consortia

In order to offer the resources and the range and depth of skills required, organisations may wish to collaborate to form a consortium which will then apply as a single Bidder for the purposes of the Procurement. Such Bidders should specify in full in their PQQ Response the identity of their proposed Consortium Members and shall appoint one of its Consortium Members to be a lead Bidder for the purposes of this Procurement.

The Bidder must specify in its PQQ Response the commercial and legal relationship amongst its members and any agreements giving effect to same. The Department reserves the right to request evidence or copies of any agreements between the parties in this respect and to comment upon them and take them into account in the next stage of the Procurement process.

Where the Bidder is a consortium, Bidder may be required to contract on any basis which the Department considers appropriate in its discretion having regard to the nature, size and complexity of the Contract, which basis may be discussed during the competitive dialogue or which will be set out in the ITPD, ISDS or ISFT.

The Department may, at its absolute discretion and in particular, require the Bidder to contract:

- on the basis of joint and several liability among the Consortium Members; or
- with a particular single Consortium Member of the Bidder as the prime contractor (with some or all of the Bidder Members providing collateral warranties and/or guarantees); or
- as an incorporated or unincorporated special purpose vehicle (with guarantees from the other Consortium Members and/or collateral warranties from the other Bidder Members); and in any event
- in a manner and on terms satisfactory to the Department.

Bidders should note section 6.3 in this regard as this sets out specific requirements with respect to the operation of the network.

Collateral warranties and/or guarantees may also be required from Bidder Members (including sub-contractors or parent companies) making available resources for the project in a manner satisfactory to the Department. This will be dependent on the proposed nature of the relationship between the Bidder and the Bidder Member and the role of the Bidder Member in the delivery of the Project. By submitting a Response, Bidders warrant and represent that they can, and irrevocably agree that they will, comply, or procure compliance, as the case may be, with this section on request by the Department.

The failure by a Bidder to comply with any such requirement may result in its rejection and elimination from the competition.

10.4 Sub-contractors



Bidders are required to disclose in their PQQ Response the names and addresses of any key sub-contractors they propose (presently or in the future) to rely upon for the purposes of this pre-qualification exercise and evaluation, stating the responsibility and role of the relevant key sub-contractors and the percentage of the work (by value) being delivered by such sub-contractor and the key contract deliverables that each sub-contractor will be responsible for. The Department reserves the right to request evidence or copies of any agreements between the parties in this respect and to comment upon them and take them into account in the next stage of the Procurement process.

Bidders may be required to contract with sub-contractors on a basis which the Department considers appropriate in its discretion having regard to the nature, size and complexity of the Contract and the role of the sub-contractor, which basis may be discussed during the competitive dialogue process or which will be set out in the ITPD, ISDS or ISFT. This may include a requirement for certain contract terms (such as a requirement for financial transparency or a requirement that the contract is assigned or otherwise transferred to the Department in certain circumstances, e.g. on a termination) to be included within key sub-contracts.

In addition, the Department reserves the right to reasonably require a Bidder to market test one or more of its key sub-contracts if the Department believes there to be an absence of competitive tension within the Procurement, for example in the case of a single Bidder situation.

Sub-contractors should be clearly identified as sub-contractors and distinguished from Consortium Members of the Bidder. The Contractor will remain solely liable under the ultimate Contract with the Department for its and any of its sub-contractors acts, errors or omissions despite the use of any sub-contractor.

10.5 Tax Clearance

The Preferred Bidder must secure tax clearance in accordance with the terms of Department of Finance Circular 43/2006: Tax Clearance Procedure: Public Sector Contracts (or any replacement) as a pre-condition to Contract award.

10.6 Change in Bidder

Any change in the:

- membership of the Bidder;
- the ownership, control or structure of the Bidder (including to the shareholding as set out in the PQQ) or any Bidder Members, and/or
- in the intended roles and responsibilities of the Bidder Members,

after the Bidder has submitted its completed PQQ Response, may lead to its disqualification unless approved by the Department in writing. The Department reserves the right to withhold approval for any such changes and to disqualify the Bidder concerned from any further participation in the procurement process.

Whilst the Department is not required to approve any such change, any approval will be dependent on a number of factors including, without limitation, that, in the view of the Department, the change is not to the detriment of the Department and the Bidder continues to meet the conditions for selection as set out in the Pre-Qualification Documents and would not have received a lower score in the pre-qualification process which would have impacted upon its ranking to the extent that it would not have been selected and provided it does not substantially alter the composition of the consortium in question.

Any proposed changes must be notified to the Department as soon as possible. Failure to notify any changes may result in disqualification of the Bidder.



It should be noted that a change will be judged as against the structure, shareholdings and responsibilities of the team proposed in the original Response to the Pre-Qualification Documents. Any such change is at the risk of the Bidder.

A Bidder may, with the Department's prior approval in writing (which may be refused at its absolute discretion, including, in particular but without limitation, if this is considered to raise any procurement risks), establish a new legal entity or entities that will take on the position of the Bidder that pre-qualified provided that:

- the conditions for selection as set out in the Pre-Qualification Documents are satisfied by the new legal entity/entities;
- the new legal entity or entities would not have received a lower score in the pre-qualification process which would have impacted upon its ranking to the extent that it would not have been selected;
- the Department gives its prior written approval to the establishment of such entity or entities for the purposes of this process; and
- the Bidder undertakes, prior to any deadline set by the Department, that any such new legal entity or entities (e.g. finance or intermediate holding companies) will be established.

The Department reserve the right to set out further requirements in relation to any proposed new legal entity or entities.

Any proposed new legal entity or entities must be notified to the Department as soon as possible.

10.7 Conflict of Interest / Participation in other Responses

Bidders are responsible for ensuring that no actual, potential or perceived conflicts of interest (collectively and individual a “**conflict of interest**”) exist.

Any conflict of interest must be fully disclosed to the Department as soon as the conflict of interest becomes apparent to the Bidder. Any Bidder who fails to comply with this obligation may be disqualified from further participation in the Procurement.

The Department will, in particular, regard as a conflict of interest any situation in which a Bidder or Bidder Member (or an adviser, agent, subcontractor or proposed funder to a Bidder or a Bidder Member) is also:

- an adviser, agent or subcontractor to the Department, ComReg or any other public department, body or authority (or any of their advisers, agents or subcontractors) in relation to the Project; or
- an adviser, agent, subcontractor or proposed funder to any other Bidder or Bidder Member on the Project; or
- a Bidder Member of any other Bidder in relation to the Project.

In the event of any conflict of interest, the Department shall, in its absolute discretion, decide on the appropriate course of action. This could include rejecting the Bidder and its Response, a prohibition in proceeding in the manner proposed (e.g. by refusing to allow a Bidder Member to a Bidder Member for a competing Bidder) and/or be subject to such other steps or safeguards as the Department considers appropriate.

A Bidder must, in particular, disclose if it, or any of its members or sub-contractors or other parties that are to be identified in its Response, has any economic, legal, commercial or financial relationship with another Bidder submitting a separate Response. In such an instance, the Bidder must notify the Department as to the identity of the other Bidder and the economic, legal commercial or financial relationship in question as soon as possible.

The Bidder is required in such event to provide an accompanying statement stating that it is aware of the proposed multiple participation and that it has been brought to the attention of all concerned



whilst, at the same time, maintaining the integrity of this competition and confidentiality. The Bidder should not, in particular, advise a Bidder as to the identity of the other Bidder whose Response it is participating in. The Bidder is also required in such an event to propose suitable protections and procedures to be put in place by the Bidder to protect against or minimise any conflict of interest, collusion or distortion of competition arising.

Bidders which are a group of firms should, therefore, inquire whether the Bidder Members are involved in any other Bidder's Response, for example, as a member and/or proposed sub-contractor.

The Department reserves the right at its absolute discretion to refuse to allow a Bidder Member to be part of another competing Bidder and/or to disqualify a Bidder in the event that there is a breach of this requirement.

If clarification is required, please contact the Department in accordance with section 9 of this PIM.

In addition, the Department will also include a requirement in the Contract for the Contractor (or, at the Department's absolute discretion, a wholesale entity responsible for operating the network and making decisions regarding access and related terms) to be established as a separate legal entity in order to provide additional assurance and transparency in relation to the Contractor's adherence to these non-discrimination requirements throughout the Contract term. Any divergence from this requirement will only be in exceptional circumstances where it can be justifiably demonstrated that taking such an approach would not be value for money for Government due to its evidenced high cost or taking such an approach is demonstrated to be impractical or where it simply cannot be implemented for legal or other reasons.

Bidders are advised to make any disclosure prior to the deadline for disclosures of conflicts of interest / multiple participation specified in table 8.1 above so that the Department can determine whether it considers this to constitute a conflict of interest or whether it may give rise to a risk of collusion or distortion of competition arising. This is so that the Bidders are informed of the Department's position in advance of submitting a Response. Disclosure must, in any event, be made in the Response at the latest.



11 Submission of Responses

11.1 Requirements

Bidders must submit Responses and participate in this Procurement subject to, and in accordance with, the requirements of the Pre-Qualification Documents and in accordance with any other requirements communicated from time to time to Bidders by the Department.

A Bidder which fails to fully comply with the Pre-Qualification Documents or any other requirements communicated from time to time to the Bidder by the Department to the satisfaction of the Department may be treated as failing to comply with mandatory conditions of the Pre-Qualification Documents and may, at the discretion of the Department and subject to section 12.3 and applicable law, be rejected and eliminated from this competition.

11.2 Response package

The entire Response (across all Lots) should be contained in a **single package**. This single package should contain four **separate sealed envelopes** (or less, depending on the Lots you are bidding for):

1) **Envelope 1: Lot Area A (Southern Intervention Area) – Lots 1A & 2A:**

A **separate sealed envelope** containing a **single** completed PQQ for **each** Bidder Member for the Southern Intervention Area (i.e. a single PQQ for each Bidder Member is completed in this respect whether you are submitting a bid for only Lot 1A, only Lot 2A or for both Lot 1A and Lot 2A).

This must be entitled “**Envelope 1: Lot Area A (Southern Intervention Area) – Lots 1A & 2A**” and state the name of the Bidder on the front of the envelope. **Nothing else** should be stated on the front cover of the envelope.

2) **Envelope 2: Lot Area B (Northern Intervention Area) – Lots 1B & 2B:**

A **separate sealed envelope** containing a **single** completed PQQ for **each** Bidder Member for the Northern Intervention Area (i.e. a single PQQ for each Bidder Member is completed in this respect whether you are submitting a bid for only Lot 1B, only Lot 2B or for both Lot 1B and Lot 2B).

This must be entitled “**Lot Area B (Northern Intervention Area) – Lots 1B & 2B**” and state the name of the Bidder on the front of the envelope. **Nothing else** should be stated on the front cover of the envelope.

3) **Envelope 3: Lot Area C (Southern and Northern Intervention Area) Bid – Lots 1C & 2C:**

A **separate sealed envelope** containing a **single** completed PQQ for **each** Bidder Member for your Combined Area Lot bid(s) (i.e. a single PQQ for each Bidder Member is completed in this respect whether you are submitting a bid for only Lot 1C, only Lot 2C or for both Lot 1C and Lot 2C).

This must be entitled “**Lot Area C (Southern and Northern Intervention Area) Bid – Lots 1C & 2C**” and state the name of the Bidder on the front of the envelope. **Nothing else** should be stated on the front cover of the envelope.

4) **Envelope 4: Ownership Models:**

A **separate sealed envelope** containing the (single) completed Lots Form (Ownership Model). The Lots Form (Ownership Model) is a separate document issued with the PIM and PQQ. This must be complete and submitted in all cases, regardless of whether you are only bidding for just one Lot or are bidding for all Lots (or something in between).



This must be entitled “**Envelope 4 (Ownership Model)**” and state the name of the Bidder on the front of the envelope. **Nothing else** should be stated on the front cover of the envelope.

This approach is based upon the assumption that a Bidder's Response for a Lot Area (whether the Southern Intervention Area, Northern Intervention Area or combined Southern and Northern Intervention Area) will be the exact same, whether the Response is in respect of the Lot(s) for the Commercial Stimulus Model or the Lot(s) for the Concession Model. If this assumption is incorrect (i.e. a Bidder's Response in this regard will be different depending upon the Ownership Model), this should be raised with the Department **immediately** through the query process set out in section 9.

11.3 Completion of PQQ

The onus is on each Bidder to demonstrate in its Response its economic and financial standing and technical and professional capability. Responses must be submitted on, and must consist of, the completed PQQ together with the documents referred to in it, any other documentation referred to in the Pre-Qualification Documents and any additional or supporting information and/or documentation which the Bidder believes necessary to clarify its offer.

Failure to submit the completed PQQ may, at the Department's absolute discretion, result in a Response being deemed invalid. This is because the PQQ is used to assess Bidder's capability, competence and suitability, in particular.

The PQQ must be completed in English.

Bidders may not amend or modify the PQQ. It is, however, acceptable to reformat the PQQ where appropriate for the purposes of presentation only; all sections and subsections must remain unchanged and in the same order and no content may be moved, removed or amended.

11.4 Return of Completed PQQ

Responses (including the completed PQQ) should be completed in accordance with these instructions and the instructions provided in the PQQ in order to be considered valid.

The closing date for receipt of the Response is Monday 29th February 2016 at 12.00 noon (local Irish time). Responses must be delivered to the postal address below and in the manner below.

CONFIDENTIAL

FAO: Siobhan Greene

PQQ Response for the National Broadband Intervention

Department of Communications, Energy and Natural Resources

Telecommunications Policy and Regulatory Division

29 – 31 Adelaide Road

Dublin D02 X285

Ireland

Late Responses received after the closing time and date for receipt of Responses will not be accepted under any circumstances.

Responses submitted by fax, e-mail or in any way other than to the above postal address will not be accepted.

Bidders must submit one (1) copy of their Response on soft copy (CD-ROM, USB, DVD) and six (6) in hard copy.

Responses delivered by hand or by post must be delivered in sealed package(s). The package must be marked with the title “**PQQ Response for the National Broadband Intervention**” and the word “Confidential”. Bidders must clearly set out a return address on the package. Responses submitted by email or fax will NOT be accepted.

All Responses submitted in soft copy must be compiled such that they can be read immediately using PDF, office word processor readers. It is the Bidder's responsibility to ensure that the



information provided on the soft copy is identical to the information provided in the hard copy Response. In the event that there is a discrepancy or conflict between the contents of the hard and soft copies of the Response, the hard copy shall be given precedence over the soft copy.

The Department is not responsible for corruption in electronic documents. Bidders must ensure electronic documents are not corrupt.

All Responses must, subject to section 12.3, be made in full accordance with the instructions in the Pre-Qualifications Documents.

All Responses and related submissions must be in the English language. To the extent that original documents are provided in a language other than English, a certified translation shall be provided also.

11.5 Full information

Bidders must disclose all relevant and up-to-date information in their Response (and subsequently when substantiating any declarations). Bidders which, or which attempt to, withhold any information that the Bidders knows or suspects to be relevant, or to mislead the Department may, at the Department's discretion, be rejected and eliminated from this Procurement.

If information or evidence provided in a Response (or subsequently when evidencing any declarations) is out of date or known or suspected not to accurately represent the situation or facts at the time of submission of the Response, this must be clearly stated at the time. This applies, in particular, to any financial information.

If a Contract is awarded to a Bidder that has knowingly withheld relevant information or misled the Department, the Contract may, at the Department's discretion, be rendered null and void.

11.6 Change in circumstances

If, as a result of a change in events, circumstances or otherwise, any information given by a Bidder to the Department, in the Response, Solution, Final Tender or otherwise, was (when submitted) or has become (by reference to facts as they then stand) untrue, incomplete or misleading, the Bidder must so inform the Department in writing as soon as it becomes aware of this. This includes, without limitation, information in relation to a Bidder's financial and economic standing.

If it comes to the Department's attention that:

- there has been a change in events or circumstances concerning a Bidder that could affect the Department's assessment of that Bidder's Response, Solution, Final Tender or the decision to issue the ITPD to that Bidder; or
- information submitted by a Bidder was (when submitted) or has become (by reference to facts as they then stand) untrue, incomplete or misleading,

the Department may (but is not obliged to) revise its assessment of the Bidder's Response, Solution or Final Tender, as the case may be, on the basis of the information then available to the Department and, at its absolute discretion (but subject to applicable law), reject the Bidder's Response, Solution and/or Final Tender and eliminate the Bidder from the Procurement.



12 Evaluation of PQQ Responses

12.1 Introduction

Each of the questions in the PQQ has been assigned a scoring methodology as follows:

Table 12.1: Scoring methodologies

Section	Question	Scoring Methodology
A.1	Bidder details	Information only
A.2	Lot bidding for	Information only
A.3	Bidder model	Information only
A.4	Details of consortium members and/or key subcontractors	Information only
A.5	Contact details	Information only
A.6	Licensing and registration	Information only
A.7	Grounds for exclusion	Pass / Fail
A.8	Conflicts of interest	Information only (subject to section 10.7)
A.9	Insurance	Pass / Fail
A.10	Health and safety	Pass / Fail
A.11	Capacity to contract	Pass / Fail
B.1 – B.8	Economic and financial standing	Weighted score
B.9	Performance bond	Pass / Fail
C.1 – C.4	Technical and professional capability	Weighted score

Each of the scoring methodologies are defined as follows:

- information only - the information provided will not be used for scoring purposes;
- pass / fail - the information provided will be assessed as pass or fail; and
- weighted score - the information provided will be assessed and scored and a pre-allocated weighting applied (which, as outlined below, can include a pass / fail threshold).

In addition to the questions listed above, Bidders are also required to confirm their acceptance of the conditions of Procurement. These declarations to be provided by Bidders have been included within Annex A of the PQQ.

12.2 Evaluation committee

The evaluation committee appointed by the Department will conduct the evaluations.

Each member of the evaluation committee will undertake such functions and tasks as each may agree to be allocated to a member or members.

The Department may use different members of the evaluation committee to evaluate economic and financial standing to those evaluating technical and professional capability (with the result that some members may input into the evaluation in one such respect only and may not read unrelated parts of a Response).

The evaluation committee is entitled, at its discretion, to, or to engage others on its behalf to, carry out independent investigations and undertake such other matters in respect of any matter arising out of or incidental to the Procurement and/or its evaluations where, in the opinion of the evaluation committee, this is necessary, appropriate or helpful.



12.3 Clarification

The Department reserves the right to require any of the Bidders to attend meetings and/or interviews in Dublin or by video conference or telephone. In such event, the Bidder will bear all its costs and expenses in attending any such meeting.

Bidders should note that the Department may elect to hold such meetings and/or interviews with only those Bidders which the Department considers, at its absolute discretion, it necessary to do so.

If a Response fails to comply in any respect with any requirements of the Pre-Qualification Documents (whether or not stated to be mandatory or similar) or the Department considers it to be ambiguous or require clarification or amplification in any respect, the Department may (but it is not obliged to) and subject to applicable law, take such action as it considers appropriate in a given case including:

- reject a Bidder whose Response is non-compliant with any requirement of the Pre-Qualification Documents; or
- without prejudice to its right to reject a Bidder in a given case for non-compliance:
 - meet with, raise issues and/or seek clarification, amplification or supplementary information from the Bidder in respect of the Response and/or the non-compliance;
 - request the Bidder to provide the Department with information on items or items which have not been provided or have been provided in an incorrect form or on an incorrect basis;
 - waive a requirement if this is, in the opinion of the Department acting reasonably and permitted by applicable law, appropriate in the circumstances (particularly if it is minor and/or procedural) and to proceed to evaluate such Response in accordance with the Pre-Qualification Documents; and/or,
 - amend the relevant requirement and invite the other Bidders to adjust their respective Responses on the basis of such revised requirement,

provided that no material amendments may be made to a Response and/or to the Department's requirements in any case where this would give rise to a breach of applicable law.

12.4 Verification

The Department may (but is not obliged to), in order to verify information provided in a Response, contact and visit Bidders and any or all of their Bidder Members, subcontractors, members, suppliers and/or referees which might be provided in the Response and may conduct any investigations (either itself or through such third parties as it may, at its absolute discretion, consider appropriate) it considers necessary in connection with Responses, including by reference to information independently sourced from the market or otherwise. The Bidders, on request, must facilitate same.

12.5 Pre-qualification evaluation

Responses to sections A through section C of the PQQ will be assessed using the selection criteria outlined in the following sections.

12.5.1 Stage 1 – completeness / compliance check

In the first instance, Bidders' Responses will be subjected to a check for completeness to ensure that all Bidders have provided a complete and compliant response to all questions and requirements contained in the Pre-Qualification Documents and have submitted all necessary supporting documentation where required. This is an initial cursory check only and does not prevent the Department from subsequently identifying any non-compliance or incompleteness.

Any Bidder who has not provided a complete response in accordance with the requirements of the Pre-Qualification Documents may, subject to section 12.3, be eliminated from the competition.



Bidders whose Responses are considered to be complete will proceed to be assessed against the eligibility requirements set out in section 12.5.2.

12.5.2 Stage 2 – eligibility requirements

The Department will, subject to section 12.3, disqualify any Bidder who (or any Bidder any of whose Bidder Members) falls within any of the circumstances set out in Regulation 53(1) of the European Communities (Award of Public Authorities' Contracts) Regulations 2006.

The Department may, subject to section 12.3, disqualify any Bidder who (or any Bidder any of whose Bidder Member) falls within any of the circumstances set out in Regulation 53(4) of the European Communities (Award of Public Authorities' Contracts) Regulations 2006.

Bidders who satisfy the eligibility requirements above will proceed to be evaluated against the minimum requirements set out in section 12.5.3.

The Bidders who are disqualified in accordance with the above grounds shall be eliminated from the remainder of the Procurement.

12.5.3 Stage 3 – minimum requirements

The Department will, subject to section 12.3, disqualify any Bidder:

- if the Bidder fails to satisfy the minimum score relating to its demonstrated “Economic and Financial Standing” (PQQ Section B), which will be assessed in accordance with section 12.7 below; or
- if the Bidder fails to satisfy the minimum score relating to its demonstrated “Technical and Professional Capability” (PQQ Section C), which will be assessed in accordance with section 12.8 below; or
- if the Bidder or any of its Bidder Members fails to self-certify to the satisfaction of the Department its compliance (i.e. answer “Yes”) to PQQ Questions A.6, A.10 and/or A.11; or
- if the Bidder or any of its Bidder Members fails to self-certify to the satisfaction of the Department its agreement and capability to provide insurances and a performance bond (where applicable) in accordance with PQQ Questions A.9 and B.9 respectively (i.e. answer “Yes” to these questions).

Bidders who satisfy the minimum requirements above will proceed to be ranked in accordance with section 12.5.4.

The Bidders who are disqualified in accordance with the above grounds shall be eliminated from the remainder of the Procurement.

12.5.4 Stage 4 – ranking

The Department will rank the remaining eligible Responses (after completion of stages 1 – 3 described in sections 12.5.1 to 12.5.3 above) based upon the overall weighted scores awarded to them in respect of their demonstrated “Economic and Financial Standing” and “Technical and Professional Capability” in accordance with section 12.6 below.

12.5.5 Stage 5 - Ownership Model Determination

Once the Responses have been ranked in accordance with section 12.5.4, the Department will then follow the procedure set out in section 5.2 of this PIM to select one of the Ownership Models.

Once the Ownership Model Determination has been made, the Department will in accordance with that decision either:

- proceed to the competitive dialogue stage with the Commercial Stimulus Model only in which case it will proceed with Lots 1A, 1B and 1C and invite the top 5 highest ranked Bidders for each of those Lots to the dialogue stage (and will terminate Lots 2A, 2B and 2C); or



- proceed to the competitive dialogue stage with the Concession Model only in which case it will proceed with Lots 2A, 2B and 2C and invite the top 5 highest ranked Bidders for each of those Lots to the dialogue stage (and will terminate Lots 1A, 1B and 1C).

12.5.6 Stage 6 - Invitation to dialogue

The Bidders will then be separately notified in writing of their inclusion, or otherwise, in the dialogue process.

In the event that there are a number of Bidders with scores tied at fifth position (i.e. mathematically equal) for a particular Lot, the Department will select from those tied Bidders the Bidder(s) with the highest aggregate score across the criteria relating to questions C.1 and C.2 in the PQQ in order to select a top five.

In the event that the aggregate scores across the criteria relating to questions C.1 and C.2 are also tied, the Department reserves the right to extend the shortlist to include all the Bidders which are tied for fifth position and which achieved the same score across the criteria relating to questions C.1 and C.2 in the PQQ so that they will be invited to participate in the dialogue.

If there are less than five eligible or sufficiently qualified Bidders for a particular Lot, the Department may, at its absolute discretion, continue the competition by inviting the eligible and sufficiently qualified Bidder(s) to participate in the dialogue, despite the fact that there may be less than five such Bidders for the relevant Lot.

Bidders should note that pre-qualified Bidders may be required to complete a Bidder's protocol undertaking before the start of the competitive dialogue process which will be provided as part of the ITPD.⁵² The purpose of the protocol is to secure the commitment of the short listed Bidders to the Department's policies for the conduct of the competitive dialogue procurement process and to providing an equal competitive opportunity to every short listed Bidder participating in this Procurement. The policies that will be covered by the protocol undertaking include policies on information sharing and "ethical walls" / "Chinese walls".

The Department may (but is not obliged to) elect to issue successful and/or unsuccessful pre-qualification notifications on a provisional basis. In this case, the (provisional) successful Bidders will be asked to confirm that they still intend to participate in the dialogue and/or that they will sign the Bidder protocol undertaking in the form specified by the Department.

If any of these Bidders confirms that it does not intend to participate in the dialogue or will not sign the undertaking, the Department may reject that Bidder and eliminate it from the Procurement. In this case, it may issue a provisional successful pre-qualification notification to the next highest ranked (eligible) Bidder for the Lot concerned with a view to it taking the place of the Bidder that dropped out or has been eliminated.⁵³

The Department may (but is not obliged to) repeat this process as it considers necessary. If the Department adopts this approach, it will then issue formal final successful and unsuccessful notification to all of the Bidders before commencing the dialogue stage.

12.6 Weighting and scoring of Responses

⁵² The Department may (but is not obliged to) eliminate and reject a Bidder from the Procurement if it refuses to sign the Bidder's protocol undertaking in a form satisfactory to the Department within a timeframe specified by the Department.

⁵³ The Department also reserves the right to revisit the Ownership Model Determination in such case based upon the updated factual position.



Percentage scores will be awarded to Responses in respect of their demonstrated economic and financial standing and technical and professional capability using the objective frameworks and methodologies set out in sections 12.7 and 12.8 respectively and applying the weightings identified in Table 12.2 below.

Table 12.2 Selection criteria and weightings

Selection criteria	Relative weighting of core criteria
Economic and financial standing	30%
Technical and professional capability	70%
Total	100%

Scores will be awarded using objective evidence and the professional judgement of the members of the evaluation committee, as appropriate.

The percentage score awarded by the evaluation committee in respect of economic and financial standing (out of 30%) will be added to the percentage score awarded by the evaluation committee in respect of technical and professional capability (out of 70%) to arrive at an overall weighted percentage score out of 100%.

This overall weighted percentage score is then used in the ranking of Responses in accordance with section 12.5.4 above.

12.7 Economic and financial standing selection criteria

12.7.1 Scoring and eligibility

For the purposes of this section 12.7 and section 12.8 of this PIM, Bidders are reminded that the term “Bidder Member” or “Bidder Members” includes:

- the Bidder;
- where the Bidder is a consortium:
 - the members of the consortium; and
 - the Shareholders of the consortium (if different); and
- where the Bidder or a Bidder Member has relied on the resources of another entity (e.g. its parent company or a key subcontractor) in its Response to the PQQ, that other entity (or entities) whose resources the Bidder or Bidder Member has relied upon (whether that be for the purposes of demonstrating its economic and financial standing or its technical and professional capability).

Bidders must submit a completed PQQ for each Bidder Member of the Bidder in accordance with the instructions set out in section 2 of the PQQ and in accordance with section 10 of this PIM.

The evaluation of a Bidder’s economic and financial standing will be based upon an evaluation of the economic and financial standing of the Bidder and all its Bidder Members.

A score in respect of the Bidder’s economic and financial standing will be awarded to the Bidder based upon the assessment criteria set out in table 12.3 below (in light of the responses by the Bidder and its Bidder Members to PQQ Questions B.1 to B.8) and the assessment methodology described in this section 12.7.

In order for a Bidder to be eligible for pre-qualification, that Bidder (in light of its and its Bidder Members’ economic and financial standing) must achieve an assessment of satisfactory, strong or very strong in respect of their overall demonstrated Economic and Financial Standing.



Any Bidder that does not achieve the minimum requirement of “satisfactory” (i.e. a minimum score of 7% out of 30% in respect of economic and financial standing) will be disqualified and shall be eliminated from the remainder of the Procurement.

No one financial indicator will be taken in isolation - an overall commercial judgment will be made by the Department and its advisers on the basis of an assessment of the information requested in the PQQ questions and the information provided in the Responses, based on the criteria set out below.

Table 12.3: Criteria for assessment of Economic and Financial Standing

Assessment	Description	Score
Very strong	The Bidder Members have provided evidence that they have an aggregate turnover above the relevant requirements in table 12.4, they are each considered to be more than economically and financially capable of fulfilling their obligations under the Contract, and there is minimal risk associated with each of the Bidder Member's financial capacity to undertake its role on the Contract or the financial capacity of Bidder Members as a whole to deliver the requirements of the Lot for which they are bidding.	24-30%
Strong	The Bidder Members have provided evidence that they have an aggregate turnover at or above the relevant requirements in table 12.4, they are each considered to be economically and financially capable of fulfilling their obligations under the Contract, and there are only minor risks associated with the Bidder Members' financial capacity to undertake its role on the Contract or the financial capacity of Bidder Members as a whole to deliver the requirements of the Lot for which they are bidding.	16-23%
Satisfactory	The Bidder Members have provided evidence that they have an aggregate turnover close to or above the relevant requirements in table 12.4, they are each generally considered to be economically and financially capable of fulfilling their obligations under the Contract (with only minor concerns), but there are considered to be some risks associated with one or more of the Bidder Members' financial capacity to undertake its role on the Contract or the financial capacity of the Bidder Members as a whole to deliver the requirements of the Lot for which they are bidding.	8-15%
Unsatisfactory (i.e. fail)	The Bidder Members have an aggregate turnover that is materially below the relevant requirements in table 12.4, or there are material concerns in relation to the economical and/or financial capability of one or more of the Bidder Members to fulfil their obligations under the Contract, or there are considered to be major risks associated with one or more of the Bidder Members' financial capacity to undertake its role on the Contract or the financial capacity of the Bidder Members as a whole to deliver the requirements of the Lot for which they are bidding.	0-7%

This assessment will be based on a review of **each** Bidder Member's financial and accounting information (whether contained in audited annual accounts or otherwise) which may consider a range of financial indicators including (but not necessarily limited to) turnover, trading performance, profit margin before tax, liquidity ratios, availability of working capital, gearing, balance sheet, shareholder funds, current banking facilities, credit ratings and other information provided in response to Questions B.1 to B.8 of the PQQ. The assessment methodology is described further in section 12.7.2 below.

The Department reserves the right to assess relevant financial and economic standing information available on each of the Bidder Members through press searches, broker reports and other relevant market information as described in section 12.7.2 below. Where there are any material issues arising, Bidders will be requested to clarify.



Whilst the Bidder Members' turnover will not be assessed in isolation, the Department does expect relevant Bidder Members (described below) to have, in aggregate, a minimum turnover of at least the relevant amounts for both network build and network operation that are stated in Table 12.4 below in each of the last two financial years, and where this is not the case turnover will be identified as an area of risk within the overall assessment of economic and financial standing and economic and financial standing will be scored accordingly.

The aggregate turnover of Bidder Members during network build and network operation will be assessed having regard to the role of each Bidder Member in the build and operation of the network as set out in the response to PQQ Question A.3. Accordingly, only those Members that are identified in the PQQ Response as fulfilling a material role at the build stage will be taken into account in the assessment of the aggregate turnover for the build stage, and only those Members that are identified as fulfilling a material role at the operations stage will be taken into account in the assessment of aggregate turnover for the operations stage. It is, therefore, important for Bidders to complete Question A.3 carefully and completely in order to clearly identify the role of each Bidder Member.

Table 12.4: Minimum Turnover

Lot	Minimum turnover in respect of network build	Minimum turnover in respect of network operation (i.e. after completion of network build)
Lot 1A	€150m	€35m
Lot 1B	€150m	€35m
Lot 1C	€300m	€70m
Lot 2A	€150m	€35m
Lot 2B	€150m	€35m
Lot 2C	€300m	€70m
Note: the minimum turnover requirements have been sized based on Department of Public Expenditure and Reform guidance for capacity requirements of an entity / entities deploying and / or operating a network of this size and with consideration of the risks to the project at each stage		

Where a Bidder consists of more than one party then the Department does expect at least one of the Bidder Members to have at least 50% of the minimum turnover requirements set out in table 12.4 while the Department expects the Bidder to meet the overall minimum turnover requirements. Where this isn't the case, it will be considered as part of the overall economic and financial standing assessment.

For the avoidance of doubt, where the Bidder (or a Bidder Member of the Bidder) is relying on the resources of another entity (e.g. a parent company) for the purposes of demonstrating its own economic and financial standing and has provided all of the necessary information and evidence in respect of such entity to the satisfaction of the Department, the financial statements and other information provided for such entity in response to Section B of the PQQ will be assessed, evaluated and marked in respect of that Bidder (or that particular Bidder Member of the Bidder).

The Department reserves the right to seek clarification from the Bidder to inform its assessment of the economic and financial standing of the Bidder and all Bidder Members of the Bidder.

12.7.2 Assessment methodology

This economic and financial standing assessment will involve a collective assessment of the information provided in responses to PQQ Questions B.1 to B.8 together with an assessment of relevant publicly available information as set out below.

The assessment of economic and financial standing will be an assessment of financial capacity, standing and risk, involving on a combination of the following activities:



- an assessment of the turnover of the Bidder Members as described in section 12.7.1 above;
- examination of the financial capacity (i.e. a measure of the size) of the Bidder Members relative to the obligations and risks each Bidder Member is likely to incur in its respective role on the Project; and
- examination of financial standing in terms of profitability, gearing and solvency of each Bidder Member as a proxy for financial risk.

The following information will be relied upon when assessing the financial capacity, solvency, gearing and profitability of each Bidder Member:

- financial statements of the Bidder Member over the past three years;
- S&P/Moody's/Fitch rating or Dunn & Bradstreet ("D&B") credit rating reports on the Bidder Member (where available). If a Bidder does not agree with this rating or thinks that it is incorrect, it can set out why it believes this to be the case together with supporting information in its submission;
- limited press searches for each of the Bidder Members, with any material issues arising to be clarified with the Bidder Member;
- broker reports (where available) for each of the Bidder Members, with any material issues arising to be clarified with the Bidder Member;
- share price information for each of the Bidder Members sourced from Bloomberg, with any material issues arising to be clarified with the Bidder Member; and
- clarification question responses.

Bidders should refer to section 5 of the PQQ (Questions B.1 to B.8) for the list of financial information to be provided by Bidder Members as part of their PQQ Response.

Table 12.5 below provides further details of a template that will be used by the evaluation committee for assessing the financial statements of each Bidder Member. It provides an output sheet summary of the financial statements received. Please note that this is provided for illustrative purposes in order to help Bidders to understand how the financial statement information will be assessed. The outputs of this template will be considered in conjunction with the other assessment activities set out above.

Table 12.5: Financial statement assessment template

Financial statement assessment template	Actual (Audited)	Actual (Audited)	Actual (Audited)
Date of financials	[31-Dec-15]	[31-Dec-14]	[31-Dec-13]
Half Year / Financial Year	FY2015	FY2014	FY2013
Headline information (€)			
Profit and Loss			
Gross turnover			
EBIT			
EBITDA			
Net profit after tax			
Balance Sheet			
Current assets			
Total assets			
Current liabilities			
Total liabilities			
Net assets			
Cash flow			
Net operating cash flow			



Investing cash flow
Financing cash flow
Cash and cash equivalents
Financial ratios
Liquidity Analysis
Current ratio
Profitability Analysis
Return on assets
Return on equity
EBITDA margin
EBIT margin
NPAT margin
Financial Leverage
Debt / Equity
Debt / (Debt + Equity)
Net Debt / Equity
Debt/FFO
Debt Service Capability
EBIT interest cover
EBITDA interest cover
FFO interest cover
FFO / Debt

Table 12.6 sets out a non-exhaustive list of the ratios/margins that are calculated as part of the economic and financial standing assessment.

Table 12.6: Ratios/margins

Ratio/ margin	Calculation
Current ratio	Current assets / current liabilities
Return on assets	Earnings before interest and taxation divided by total assets
Return on equity	Profit / Loss after tax divided by net assets
EBITDA Margin	Earnings before interest, taxation, depreciation and amortisation divided by total revenue
EBIT Margin	Earnings before interest and taxation divided by total revenue
NPAT Margin	Net profit after tax divided by total revenue
Debt / Equity	Debt divided by equity
Debt / (Debt + Equity)	Debt divided by debt plus equity
Net debt / equity	Net debt divided by equity
Net debt	Short term debt + long term debt – cash & cash equivalents
Debt / FFO	Debt divided by funds from operations
EBIT interest cover	Earnings before interest and taxation divided by interest expense



EBITDA interest cover	Earnings before interest, taxation, depreciation and amortisation divided by interest expense
FFO interest cover	Funds from operations divided by interest expense
FFO / Debt	Funds from operations divided by debt

12.8 Technical and professional capability selection criteria

12.8.1 Criteria and weightings

The assessment of a Bidder's demonstrated Technical and Professional Capability will be undertaken in accordance with the criteria set out in the table below.

Table 12.7: Technical and Professional Capability Selection Criteria

Criteria (and related PQQ Questions)	Questions	Weighting
Design and deployment of networks	C.1	40
Operation and maintenance of networks	C.2	40
Operation of wholesale delivery platforms and serving the needs of retail service providers	C.3	10
Quality assurance systems and processes	C.4	10
TOTAL SCORE		100

In order to be eligible for pre-qualification, Bidders must receive an overall weighted score of at least 50% in respect of their demonstrated Technical and Professional Capability (i.e. 50% of the maximum overall weighted score for Technical and Professional Capability).

12.8.2 Defined terms

The terms in the table below have the meaning given to them below when used in the tables 12.9 to 12.12 below.

Table 12.8: Defined terms

Term	Description ⁵⁴
------	---------------------------

⁵⁴ The number of premises within a Lot will not be changed (for the purposes of the evaluation) between the date of publication of the PIM and the completion of the pre-qualification evaluation, unless Bidders are notified accordingly in advance.



Maximum Number	<p>100% of the number of premises within the relevant Lot (as currently envisaged). 100% of the number of premises within the relevant Lots (as currently envisaged) is as follows:</p> <ul style="list-style-type: none"> • Lot 1A = 413,614 • Lot 1B = 343,875 • Lot 1C = 757,489 • Lot 2A = 413,614 • Lot 2B = 343,875 • Lot 2C = 757,489
High Number	<p>70% of the number of premises within the relevant Lot (as currently envisaged). 70% of the number of premises within the relevant Lots (as currently envisaged) is as follows:</p> <ul style="list-style-type: none"> • Lot 1A = 289,530 • Lot 1B = 240,713 • Lot 1C = 530,242 • Lot 2A = 289,530 • Lot 2B = 240,713 • Lot 2C = 530,242
Medium Number	<p>50% of the number of premises within the relevant Lot (as currently envisaged). 50% of the number of premises within the relevant Lots (as currently envisaged) is as follows:</p> <ul style="list-style-type: none"> • Lot 1A = 144,765 • Lot 1B = 120,356 • Lot 1C = 265,121 • Lot 2A = 144,765 • Lot 2B = 120,356 • Lot 2C = 265,121
Low Number	<p>30% of the number of premises within the relevant Lot (as currently envisaged). 30% of the number of premises within the relevant Lots (as currently envisaged) is as follows:</p> <ul style="list-style-type: none"> • Lot 1A = 43,429 • Lot 1B = 36,107 • Lot 1C = 79,536 • Lot 2A = 43,429 • Lot 2B = 36,107 • Lot 2C = 79,536
Designed and deployed	<p>Designed and deployed means having carried out of the activities necessary to construct a network including but not limited to:</p> <ul style="list-style-type: none"> • desk top reviews • site surveys • pilot projects • production of high level design • production of detailed design incorporating detailed drawings, bills of material etc. • site acquisition • obtaining planning permission and wayleaves • network construction • connecting sites and/or cabinets to power • integrating the access network to the core network
Passed a premise	<p>A network is considered to have passed a premise when the conditions set out in section 6.5.1 of the PIM have been met.</p> <p>This is assessed by reference to any premises passed up to, but not after, the date the Response was due. A Bidder may not amend its Response in this regard if it submits the Response before the Response due date.</p>



Connected to a premise	<p>A network is considered to be connected to a premise:</p> <ul style="list-style-type: none"> when customers in that premise receive two way telecommunications services, in the case of a telecommunications access network; or where customers in the premise are connected to a utility network over which they utilise gas, electricity or water, in the case of a utility network. <p>This is assessed by reference to any premises connected up to, but not after, the date the Response was due. A Bidder may not amend its Response in this regard if it submits the Response before the Response due date.</p>
Rollout duration	The rollout of a network is considered to have started upon mobilisation of the construction crews and be completed upon passing the last premise in the rollout plan with the network. This period is the rollout duration
Telecommunications access network	<p>A telecommunications access network is:</p> <ul style="list-style-type: none"> in the case an electronics communications network which is used to provide wireless two way telecommunications services to premises, the network section between the customer premises and the wireless access site at which the serving radio equipment is located, or in the case an electronics communications network which is used to provide wireline two way telecommunications services to premises, the network section between the customer premises and the first point of aggregation in the network which contains active equipment (e.g. exchange, street cabinet).
Utility network	A utility (gas, water or electricity) network is the network which connects and delivers gas, water or electricity from the nearest aggregation point to the customer premises.
Wholesale access services	Wholesale access services mean some or all of the services set out in section 6.1.2 of this PIM which are further described in Section 5 of the Technical Report.

12.8.3 Scoring definitions

The following definitions will be used to assign scores in respect of each of the criteria stated in table 12.7 above. This will be based upon the responses to the corresponding questions in the PQQ stated in table 12.7 above.

Table 12.9: Scoring definitions for design and deployment of networks (Question C.1)

Assessment	Description	Score
Maximum	<p>The assessment indicates a very strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of design and deployment of networks.</p> <p>In order to achieve this threshold (and a score of 5), the Bidder must have provided comprehensive evidence of a project or projects undertaken by the Bidder or by one or more Bidder Members which must demonstrate that the Bidder / Bidder Member(s) has designed and deployed a network or networks which meet the minimum specifications as detailed in section 6.1.3 of this PIM (the “Network”) and that the project satisfies, or the projects satisfy between them, each and every one of the following conditions:</p> <ul style="list-style-type: none"> one of those Networks must have passed a number of premises which is at least 100% of the Maximum Number of premises; and one of those Network’s rollout duration must have been 5 years or less; and one of those Networks must be connected to at least 20% of the Maximum Number of premises. 	5



Assessment	Description	Score
High	<p>The assessment indicates a strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of design and deployment of networks.</p> <p>In order to achieve this threshold (and a score of 4), the Bidder must have provided comprehensive evidence of a project or projects undertaken by the Bidder or by one or more Bidder Members which must demonstrate that the Bidder / Bidder Member(s) has designed and deployed a telecommunications access network (the “Network”) and that the project satisfies, or the projects satisfy between them, each and every one of the following conditions:</p> <ul style="list-style-type: none"> • one of those Networks must have passed a number of premises which is at least 100% of the High Number of premises; and • one of those Network’s rollout duration must have been 5 years or less, and • one of those Networks must be connected to at least 20% of the High Number of premises. 	4
Medium	<p>The assessment indicates a reasonable likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of design and deployment of networks.</p> <p>In order to achieve this threshold (and a score of 3), the Bidder must have provided comprehensive evidence of a project or projects undertaken by the Bidder or by one or more Bidder Members which must demonstrate that the Bidder / Bidder Member(s) has designed and deployed a telecommunications access network or a utility network (the “Network”) and that the project satisfies, or the projects satisfy between them, each and every one of the following conditions:</p> <ul style="list-style-type: none"> • one of those Networks must have passed a number of premises which is at least 100% of the Medium Number of premises; and • one of those Networks must be connected to at least 20% of the Medium Number of premises. 	3
Low	<p>The assessment indicates that some risk exists in terms of the Bidder’s capability of meeting the technical and professional obligations anticipated under the Project in respect of design and deployment of networks.</p> <p>In order to achieve this threshold (and a score of 2), the Bidder must have provided comprehensive evidence of a project or projects undertaken by the Bidder or by one or more Bidder Members which must demonstrate that the Bidder / Bidder Member(s) has designed and deployed a telecommunications access network or a utility network (the “Network”) and that the project satisfies, or the projects satisfy between them, each and every one of the following conditions:</p> <ul style="list-style-type: none"> • one of those Networks must have passed a number of premises which is at least 100% of the Low Number of premises; and • one of those Networks must be connected to at least 20% of the Low Number of premises. 	2
Very Low	<p>The assessment indicates that a significant risk exists in terms of the Bidder’s capability of meeting the technical and professional obligations anticipated under the Project in respect of design and deployment of networks.</p> <p>In order to achieve this threshold (and a score of 1), the Bidder must have provided comprehensive evidence of a project or projects undertaken by the Bidder or by one or more Bidder Members which must demonstrate that the Bidder / Bidder Member(s) has designed and deployed a telecommunications access network or a utility network.</p>	1
Nil	The assessment indicates that no response has been provided	0



Table 12.10: Scoring definitions for operation and maintenance of networks (Question C.2)

Assessment	Description	Score
Maximum	<p>The assessment indicates a very strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of operation and maintenance of networks.</p> <p>In order to achieve this threshold (and a score of 5), the Bidder must have provided comprehensive evidence of an example case or example cases which demonstrate that the Bidder or one or more Bidder Members has operations experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of a network which meet the minimum specifications as detailed in section 6.1.3 of this PIM and that the example case satisfies, or the example cases satisfy between them, the following condition:</p> <ul style="list-style-type: none"> • that the Bidder's / Bidder Member's operational experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of one of those Networks has a duration of at least 2 years; and • at least one of the following: one of those Networks must be connected to at least 20% of the Maximum Number of premises or one of those Networks is used by more than 5 RSPs or one of those Networks is serving geographically dispersed customers on a national basis (that is at least 20 counties). 	5
High	<p>The assessment indicates a strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of operation and maintenance of networks.</p> <p>In order to achieve this threshold (and a score of 4), the Bidder must have provided comprehensive evidence of an example case or example cases which demonstrate that the Bidder or one or more Bidder Members has operations experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of a telecommunications access network (the "Network") and that the example case satisfies, or the example cases satisfy between them, the following condition:</p> <ul style="list-style-type: none"> • that the Bidder's / Bidder Member's operational experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of one of those Networks has a duration of at least 2 years; and • at least one of the following: one of those Networks must be connected to at least 20% of the High Number of premises or one of those Networks is used by more than 4 RSPs or one of those Networks is serving geographically dispersed customers on a national basis (that is at least 15 counties). 	4



Assessment	Description	Score
Medium	<p>The assessment indicates a reasonable likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of operation and maintenance of networks.</p> <p>In order to achieve this threshold (and a score of 3), the Bidder must have provided comprehensive evidence of an example case or example cases which must demonstrate that the Bidder or one or more Bidder Members has operations experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of a telecommunications access network or utility network (the “Network”) and that the example case satisfies, or the example cases satisfy between them, the following condition:</p> <ul style="list-style-type: none"> • that the Bidder’s / Bidder Member’s operational experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of one of those Networks has a duration of at least 2 years; and • at least one of the following: one of those Networks must be connected to at least 20% of the Medium Number of premises or one of those Networks is used by more than 3 RSPs or one of those Networks is serving geographically dispersed customers on a provincial basis (that is at least 10 counties).. 	3
Low	<p>The assessment indicates that some risk exists in terms of the Bidder’s capability of meeting the technical and professional obligations anticipated under the Project in respect of operation and maintenance of networks.</p> <p>In order to achieve this threshold (and a score of 2), the Bidder must have provided comprehensive evidence of an example case or example cases which must demonstrate that the Bidder or one or more Bidder Members has operations experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of a telecommunications access network or utility network (the “Network”) and that the example case satisfies, or the example cases satisfy between them the following condition:</p> <ul style="list-style-type: none"> • that the Bidder’s / Bidder Member’s operational experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of one of those Networks has a duration of at least 1 year; and • at least one of the following: one of those Networks must be connected to at least 20% of the Low Number of premises or one of those Networks is used by more than 2 RSPs or one of those Networks is serving geographically dispersed customers on a regional basis (that is at least 5 counties).. 	2



Assessment	Description	Score
Very Low	<p>The assessment indicates that a significant risk exists in terms of the Bidder's capability of meeting the technical and professional obligations anticipated under the Project in respect of operation and maintenance of networks.</p> <p>In order to achieve this threshold (and a score of 1), the Bidder must have provided comprehensive evidence of an example case or example cases which must demonstrate that the Bidder or one or more Bidder Members has operations experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of a telecommunications access network or utility network (the "Network") and that the example case satisfies, or the example cases satisfy between them, each of the following conditions:</p> <ul style="list-style-type: none"> • that the Bidder's / Bidder Member's operational experience (including, at least, experience in respect of ordering, provisioning, customer care and billing) and maintenance experience (including, at least, experience in respect of monitoring, fault repair and continuous improvement) of one of those Networks has a duration of at least 1 year, and • at least one of the following: one of those Networks must be connected to at least 1% of the Low Number of premises or one of those Networks is used by 1 or more RSPs. 	1
Nil	The assessment indicates that no response has been provided	0



Table 12.11: Scoring definitions for operation of wholesale delivery platforms and serving the needs of retail service providers (Question C.3)

Assessment	Description	Score
Maximum	<p>The assessment indicates a very strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of operation of wholesale delivery platforms and serving the needs of retail service providers.</p> <p>In order to achieve this threshold (and a score of 5), the Bidder must have provided comprehensive evidence through one or two examples undertaken by the Bidder or Bidder Members which satisfy each and every one of the following conditions:</p> <ul style="list-style-type: none"> the examples together must demonstrate that the Bidder Members have between them⁵⁵ provided the full portfolio of wholesale access products as described in Section 6.1.2 of this PIM; and the examples together must demonstrate that the Bidder Members have between them implemented a platform or gateway which provides the full functionality as described in Section 6.1.7 of this PIM and further described in Section 5.6 (Eol platform specification) of the Technical Report; and the Bidder Members have provided between them wholesale access services to at least 7 RSPs (retail service providers). 	5
High	<p>The assessment indicates a strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of operation of wholesale delivery platforms and serving the needs of retail service providers.</p> <p>In order to achieve this threshold (and a score of 4), the Bidder must have provided comprehensive evidence through one or two examples undertaken by the Bidder or one or more Bidder Members which satisfy each and every one of the following conditions:</p> <ul style="list-style-type: none"> the examples together must demonstrate that the Bidder Members have between them provided 50% or more of the full portfolio of wholesale access products as described in Section 6.1.2 of this PIM; and the examples together must demonstrate that the Bidder Members have between them implemented a platform or gateway which provides the most of the full functionality as described in Section 6.1.7 of this PIM and further described in Section 5.6 (Eol platform specification) of the Technical Report; and the examples together must demonstrate that the Bidder Members are between them providing wholesale access services to at least 3 RSPs (retail service providers). 	4

⁵⁵ “Between them” when used here and in the rest of this and other tables in this section 12.8 means where, between and/or across any or all of the Bidder Members individually or in combination or in aggregate, the relevant condition is met.



Assessment	Description	Score
Medium	<p>The assessment indicates a reasonable likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of operation of wholesale delivery platforms and serving the needs of retail service providers.</p> <p>In order to achieve this threshold (and a score of 3), the Bidder must have provided comprehensive evidence through one or two examples undertaken by the Bidder or one or more Bidder Members which satisfy each and every one of the following conditions:</p> <ul style="list-style-type: none"> the examples together must demonstrate that the Bidder Members have between them provided one or more of the full portfolio of active wholesale access products as described in Section 6.1.2 of this PIM; and the examples together must demonstrate that the Bidder Members have between them implemented a wholesale platform or gateway; and the examples together must demonstrate that the Bidder Members are between them providing wholesale access services to at least 1 RSP (retail service provider). 	3
Low	<p>The assessment indicates that some risk exists in terms of the Bidder's capability of meeting the technical and professional obligations anticipated under the Project in respect of operation of wholesale delivery platforms and serving the needs of retail service providers.</p> <p>In order to achieve this threshold (and a score of 2), the Bidder must have provided comprehensive evidence through one or two examples undertaken by the Bidder or one or more Bidder Members which satisfy the following conditions:</p> <ul style="list-style-type: none"> the examples together must demonstrate that the Bidder Members have between them provided one or more of the active wholesale access products as described in Section 6.1.2 of this PIM; and the examples together must demonstrate that the Bidder Members are between them providing wholesale access services to at least 1 RSP (retail service provider). 	2
Very Low	<p>The assessment indicates that a significant risk exists in terms of the Bidder's capability of meeting the technical and professional obligations anticipated under the Project in respect of operation of wholesale delivery platforms and serving the needs of retail service providers.</p> <p>In order to achieve this threshold (and a score of 1), the Bidder must have provided comprehensive evidence through one or two examples demonstrating that the Bidder Members are between them offering wholesale access services in the telecommunications market.</p>	1
Nil	The assessment indicates that no response has been provided	0



Table 12.12: Scoring definitions for quality assurance systems and processes (Question C.4)^{56 57}

Assessment	Description	Score
Maximum	<p>The assessment indicates a very strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of quality assurance systems and processes and in respect of health and safety processes and procedures.</p> <p>In order to achieve this threshold (and a score of 5), the Bidder must have provided comprehensive evidence that at least:</p> <ul style="list-style-type: none"> • one of the Bidder Members who will be directly responsible for the design, deployment, operation and maintenance of the network of the service is currently certified to relevant ISO 9000 series of quality standards (or equivalent). The quality standard will apply to the performance of the obligations anticipated under the Project, as outlined in the PIM, in respect of the design, deployment, operation and maintenance of networks; and • one of the Bidder Members have comprehensive relevant quality management and assurance systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks, and • one of the Bidder Members have comprehensive relevant health and safety systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks; and • one of the Bidder Members has been appointed as PSDS (Project Supervisor Design Stage) (or equivalent in another jurisdiction) for a telecommunications access network in the last five years; and • one of the Bidder Members has been appointed as PSCS (Project Supervisor Construction Stage) (or equivalent in another jurisdiction) for a telecommunications access network in the last five years. 	5

⁵⁶ PSDP in this table refers to the statutory role of Project Supervisor Design Stage. More information in relation to this role is set out in Guidelines on the Procurement, Design and Management Requirements of the Safety health and Welfare at Work (Construction) Regulations 2006 updated to take account of account of the Safety, Health and Welfare at Work (Construction) Regulations 2013 which came into effect on the 1st August 2013.

⁵⁷ PSCS in this table refers to the statutory role of Project Supervisor Construction Stage. More information in relation to this role is set out in Guidelines on the Procurement, Design and Management Requirements of the Safety health and Welfare at Work (Construction) Regulations 2006 updated to take account of account of the Safety, Health and Welfare at Work (Construction) Regulations 2013 which came into effect on the 1st August 2013.



Assessment	Description	Score
High	<p>The assessment indicates a strong likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of quality assurance systems and processes and in respect of health and safety processes and procedures.</p> <p>In order to achieve this threshold (and a score of 4), the Bidder must have provided comprehensive evidence that at least:</p> <ul style="list-style-type: none"> • one of the Bidder Members who will be directly responsible for the design, deployment, operation and maintenance of the network of the service is currently certified to relevant ISO 9000 series of quality standards (or equivalent).The quality standard will apply to the performance of the obligations anticipated under the Project, as outlined in the PIM, in respect of the design, deployment, operation and maintenance of networks; and • one of the Bidder Members has good relevant quality management and assurance systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks, and • one of the Bidder Members has good relevant health and safety systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks; and • one of the Bidder Members has been appointed as PSDS (Project Supervisor Design Stage) (or equivalent in another jurisdiction) for a telecommunications access network in the last five years; and • one of the Bidder Members has been appointed as PSCS (Project Supervisor Construction Stage) (or equivalent in another jurisdiction) for a telecommunications access network in the last five years. 	4
Medium	<p>The assessment indicates a reasonable likelihood that the Bidder is capable of meeting the technical and professional obligations anticipated under the Project in respect of quality assurance systems and processes and in respect of health and safety processes and procedures.</p> <p>In order to achieve this threshold (and a score of 3), the Bidder must have provided comprehensive evidence that at least:</p> <ul style="list-style-type: none"> • one of the Bidder Members who will be directly responsible for the design, deployment, operation and maintenance of the network of the service is currently certified to relevant ISO 9000 series of quality standards (or equivalent).The quality standard will apply to the performance of the obligations anticipated under the Project, as outlined in the PIM, in respect of the design, deployment, operation and maintenance of networks; and • one of the Bidder Members has adequate relevant quality management and assurance systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks, and • one of the Bidder Members has adequate relevant health and safety systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks; and • one of the Bidder Members has been appointed as PSDS (Project Supervisor Design Stage) (or equivalent in another jurisdiction) for a telecommunications access network in the last five years; and • one of the Bidder Members has been appointed as PSCS (Project Supervisor Construction Stage) (or equivalent in another jurisdiction) for a telecommunications access network in the last five years. 	3



Assessment	Description	Score
Low	<p>The assessment indicates that some risk exists in terms of the Bidder's capability of meeting the technical and professional obligations anticipated under the Project in respect of quality assurance systems and processes and in respect of health and safety processes and procedures.</p> <p>In order to achieve this threshold (and a score of 2), the Bidder must have provided comprehensive evidence that at least:</p> <ul style="list-style-type: none"> one of the Bidder Members has adequate relevant quality management and assurance systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks; and one of the Bidder Members has adequate relevant health and safety systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks. 	2
Very Low	<p>The assessment indicates that a significant risk exists in terms of the Bidder's capability of meeting the technical and professional obligations anticipated under the Project in respect of quality assurance systems and processes and in respect of health and safety processes and procedures.</p> <p>In order to achieve this threshold (and a score of 1), the Bidder must have provided comprehensive evidence that at least:</p> <ul style="list-style-type: none"> one of the Bidder Members has quality management and assurance systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks; and one of the Bidder Members has health and safety systems, processes and procedures covering the design, deployment, operation and maintenance of telecommunications access networks. <p>However, the evidence provided has not demonstrated to the satisfaction of the Department that the quality management and assurance systems, processes and procedures and health and safety systems, processes and procedures are adequate and relevant.</p>	1
Nil	The assessment indicates that no response has been provided	0

12.8.4 Allocation of marks

The scoring definitions in section 12.8.3 will be used to assign scores in respect of each of the criteria stated in section 12.8.1 above. This will be based upon the responses to the corresponding questions in the PQQ stated above in table 12.7 above. In allocating marks the evaluation committee may (but is not obliged to)⁵⁸ have regard to content provided in responses to other questions in the PQQ.

Each Bidder will be awarded a score (out of 5) for each criterion based on the overall assessment of the quality of the Bidder's response to the question relating to that criterion (as set out in table 12.7), considering every part of the question, the responses provided by the Bidder Members and by reference to the relevant scoring definitions from tables 12.9 to 12.12 above and the defined terms set out in table 12.8.

The score awarded to the Bidder in respect of each criterion will then be multiplied by the weighting for that criterion as set out in table 12.7 above to arrive at a weighted score in respect of that criterion in accordance with the following formulae:

$$\text{Weighted score for criterion} = \left(\frac{\text{Score awarded}}{5} \right) \times \text{weighting}$$

⁵⁸ Bidders should accordingly ensure that all relevant information is included in response to the relevant question in the PQQ.



Finally, the weighted scores achieved by the Bidder for all four criteria will be added together to arrive at an overall weighted score for the technical and professional capability demonstrated by the Bidder. This overall weighted score will then be converted into a percentage score in respect of technical and professional capability by multiplying the overall weighted score by the percentage weighting allocated to technical and professional capability in table 12.2 above in accordance with the following formula:

$$\text{Percentage score} = \text{overall weighted score} \times \text{weighting}$$

The Department reserves the right to seek clarification from the Bidder to inform its assessment of the technical and professional capability demonstrated by the Bidder.

12.9 Reassessment

The Department may (but is not obliged to) require Bidders, at any time (including from time to time during the dialogue or Final Tender stage and at any time up until the Contract takes legal effect and all pre-conditions to it have been satisfied), to provide evidence verifying their declarations or any findings with respect to their economic and financial standing and technical and professional capability, continued satisfaction of the eligibility requirements or any other conditions of the Pre-Qualification Documents or to confirm that there has been no change in such respect or in respect of any information provided in its Response.

The Department may (but is not obliged to) do this at a number of different stages in the Procurement process. It may (but is not obliged to), by way of (non-exhaustive) example, assess whether (some or all of) the Pre-Qualification Minimum Requirements are met or require evidence substantiating declarations made in the Response or prior to the shortlisting of the Bidders, during the dialogue or Final Tender stage of this process, and also reassess this at the Preferred Bidder stage. The Department will be entitled to take into account up-to-date and current information, circumstances and events at any such stage, including new information not previously provided to the Department at an earlier point or new or changed circumstances and events.

A Bidder may, at the Department's absolute discretion and subject to applicable law, be rejected at any time in the event that it cannot provide sufficient evidence to demonstrate to the Department's satisfaction that it continues to meet any of the Pre-Qualification Minimum Requirements or to substantiate any declarations made in its Response.



13 Conditions of Procurement

13.1 Applicable Law

The Pre-Qualification Documents and any matter or disputes related to or in any way connected with or arising out of the Pre-Qualification Documents or the Procurement are governed by and construed in all respects in accordance with the laws of Ireland and subject to the exclusive jurisdiction of the Irish Courts of Ireland.

13.2 Compliance with Law and Regulation

Bidders (and their Bidder Members, Shareholders, subcontractors and others involved in their Response) must comply with all relevant laws and regulations that are applicable to them in the context of this Procurement.

Any Bidder that fails to comply with such laws and regulations to the satisfaction of the Department may be treated as failing to comply with the conditions of this Procurement and may, at the discretion of the Department, be rejected and eliminated from this Procurement.

13.3 Costs

Each party will be liable for its own costs and expenses arising out of or in relation to its participation in this Procurement, including the preparation and submission of any Responses to the Pre-Qualification Documents and/or subsequent Solutions and/or Final Tenders and the conduct of any subsequent discussions with the Department during the competitive dialogue phase and the remainder of the Procurement. This applies in all cases whatsoever, including where the Procurement is terminated or errors are made in the running and decision making in the Procurement.

For the avoidance of doubt, the Department, Minister and its appointed advisers have no obligation whatsoever to reimburse any Bidder (or any of its Bidder Members, Shareholders, subcontractors, advisors) or others in respect of any costs, economic loss or other loss of profit (whether direct or indirect) incurred by it either in the preparation and submission of the Response to the PQQ, subsequent Solutions and/or Final Tenders made to the Department, or arising from clarifications and discussions with the Department in connection with the possible award of the Contract, or otherwise as a result of its participation in the Procurement, regardless of whether or not the Procurement results in the award of the Contract or is terminated in whole or in part (including where it is terminated in light of errors made in undertaking the Procurement).

13.4 Bidder Eligibility

Bidders are reminded that the Pre-Qualification Minimum Requirements apply to the Procurement at all times (including up to and including the Preferred Bidder stage). The Department may treat a Bidder as ineligible and reject it and/or decide not to permit a Bidder to continue to participate in the Procurement process:

- on any one of the grounds set out in the European Communities (Award of Public Authorities' Contracts) Regulations 2006; or
- if the economic and financial standing or technical and professional capability of the Bidder (or a Bidder Member) deteriorates during the Procurement process to such an extent that the Bidder no longer has the requisite economic and financial standing or technical and professional ability for the award of the Contract.

The Department reserves the right, at its sole discretion, to re-assess the eligibility, economic and financial standing and technical and professional capability of any Bidder (or Bidder Member) at any



point(s) throughout this Procurement to ensure that the Bidder continues to remain eligible and have the requisite economic and financial standing and technical and professional capability for the award of the Contract.

13.5 Capacity to contract

Bidders (or in the case of consortia each Bidder Member of the Bidder) are to confirm that they have the legal capacity and are not otherwise constrained (including constraints imposed by funders and/or other stakeholders) in relation to their ability to enter into a contract for the Project and to fulfil their role in the delivery of the Project.

13.6 Security

The Department reserves the right, at its absolute discretion, to reasonably require the successful Bidder(s) / Preferred Bidder(s) as a condition of Contract to procure the provision to the Department of a guarantee or other form of security such as a performance bond in respect of the delivery of the services (or a part of the services) to the satisfaction of the Department. Such a requirement may apply to the deployment phase of the Project and/or to the operating phase. The Department will set out its requirements in this regard for the selected Bidders for each Lot at the dialogue stage.

By submitting a Response to the PQQ and potentially later through the ITPD, Bidders warrant and represent that they can, and irrevocably agree that they will, comply, or procure compliance, as the case may be, with this requirement on request by the Department.

13.7 Warranty

The publication of the Pre-Qualification Documents do not warrant or imply that any Bidder will be awarded the Contract or Contracts or invited to the next stage of this Procurement, that the ITPD, ISDS, ISRS or ISFT will be issued or that any Bidder will be awarded or invited to enter into the Contract or Contracts on any particular conditions.

13.8 The Department's rights

The Department is entitled, at its absolute discretion, to take a different approach in relation to any matter with respect to one Lot to that taken with respect to other Lots.

The Department reserves the right for any reason whatever at its absolute discretion, with respect to any one, more or all Lots (including with respect to just one or some but not all Lots or in different ways with respect to different Lots), to:

- extend any or all timelines set out in the Pre-Qualification Documents (either unilaterally or in response to a request from a Bidder to do so);
- reject any and all Responses;
- not to select any Response, Solution, Bidder, Preferred Bidder and/or Final Tender;
- to terminate any one or more Lots whilst continuing with other Lots (including, without limitation, in the manner contemplated by section 5.2);
- not to proceed to any subsequent stage of the Procurement process;
- not to issue the ITPD, ISDS, ISFS or ISFT;
- not to award any Contract;
- not to implement any arrangement contemplated by the Pre-Qualification Documents;
- not to provide a Bidder with any additional information;



- to update this document or any other document at any time;
- to amend the scope of the Project or Procurement;
- to amend, refine, adjust, change or remove existing requirements or introduce new requirements with respect to the Project, Contract, Procurement or otherwise;
- to amend the Pre-Qualification Documents or other document;
- not to proceed with the Procurement or Project;
- to withdraw from any dialogue, negotiations or discussions;
- to suspend the Procurement, dialogue, negotiations or any other discussions (and re-commence it subsequently no matter how long the suspension);
- to re-visit / re-run earlier stages of the Procurement process, with the same or amended requirements, scope and/or criteria;
- to terminate, at its absolute discretion, the Pre-Qualification Documents and/or the Procurement at any time and without reason; and/or
- to procure and award the subject matter of this Procurement and the Project in whole or in part by other means.

The Department is under no obligation to award any Contract to the best priced, most economically advantageous or any Final Tenders it may receive. The Department may award a Contract for some Lots, but not other Lots.

13.9 Canvassing

Direct or indirect canvassing by any Bidder, Consortium Member, Bidder Member or their suppliers or advisers in relation to the Project or the Procurement or any attempt to obtain information from any of the agents or employees of the Department, its political representatives or its appointed advisers concerning another Bidder or a Solution or Final Tender or the Procurement is prohibited.

Bidders must not offer, give or agree to give to any member of the Department (or its advisers or evaluation team) any gift, or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any Contract.

Any breach of this section will entitle the Department to immediately disqualify the Bidder concerned from the Procurement and/or cancel and terminate the Contract or any existing contracts that the Bidder has with the Department. The Department may recover any loss of expense resulting from any such termination.

13.10 Conflict of Interest

Bidders are reminded of the conditions in respect of conflicts of interest, as set out in section 10 of this PIM.

13.11 Collusion

Collusion or any attempt by any interested party, Bidder, its Bidder Members or their suppliers or advisers to collude with any other person in order to influence the Procurement in any way will result in disqualification from further participation in the Procurement. For example, Bidders and their Bidder Members and their suppliers and advisers shall not directly or indirectly at any time:

- fix or adjust the amount or content of any PQQ Response and /or subsequent Solutions and/or Final Tenders in accordance with any agreement or arrangement with any other person, other than in good faith where such other person is a proposed Bidder Member or a supplier, adviser or provider of finance to the Bidder or Bidder Member;



- communicate to any person other than the Department, or seek or obtain from such other person, information about the amount or content of any PQQ Response and /or subsequent Solutions and/or Final Tenders, other than in good faith to obtain quotations for supplies, services or finance;
- enter into any agreement or arrangement with any other person that will result in such a person refraining from submitting a PQQ Response and/or subsequent Solutions and/or Final Tenders;
- enter into any agreement or arrangement with any other person as to the form, content, scope or amount of any other PQQ Response and /or subsequent Solutions and/or Final Tenders; or
- offer or pay a sum of money, incentive or valuable consideration to any person proposing to effect changes in or omissions from any other PQQ and /or subsequent Solutions and/or Final Tenders.

Any Bidder that fails to comply with this section to the satisfaction of the Department may be treated as failing to comply with the conditions of this Procurement and may, at the discretion of the Department, be rejected and eliminated from this Procurement.

13.12 Errors

If a Bidder discovers any error or omissions or lack of clarity in the Pre-Qualification Documents, the Bidder must immediately notify the Department in writing of such error, omission or lack of clarity.

13.13 Compliant and Unqualified Responses

Bidders must submit a fully compliant Response to the PQQ which is not qualified in any way.

13.14 Confidentiality

The Bidder agrees to keep confidential the contents of this PQQ, the Invitation to Participate in Dialogue, the Invitation to Submit Detailed Solutions, the Invitation to Submit Refined Detailed Solutions, the Invitation to Submit Final Tender, all information which relates to the business and affairs of the Department (and its suppliers, service providers, agents, professional advisers and representatives) and all information which the Bidder receives or obtains as a result of its involvement in the Procurement and all other information which has either been designated as confidential by the Department in writing or that ought to be considered confidential (“**Confidential Information**”).

Accordingly, the release of the Confidential Information to the Bidder (or its Bidder Members or other relevant people) during the Procurement is conditional upon:

- the Bidder taking all steps necessary to prevent the Confidential Information from being disclosed to the public or any third party or coming by any means into the possession of any third party;
- this confidentiality undertaking being binding upon the Bidder and its Bidder Members and others involved in its Response and all of their respective associated companies and associates and all of their respective officers, employees, servants, agents or professional advisers (together “**Relevant Persons**”);
- the Bidder using the Confidential Information solely for the purpose of evaluating whether or not to enter into an agreement with the Minister in relation to the Project or to perform any obligations which the Bidder may undertake or has undertaken with the Minister or Department relating to the Project and neither the Bidder nor any Relevant Person shall use any of the Confidential Information for any other purpose whatsoever;
- the Bidder and Relevant Persons not using or disclosing or permitting the disclosure by any person of any of the Confidential Information for the benefit of any third party;



- the Confidential Information and its circulation shall be restricted to circulation and disclosure to individuals whose access to such Confidential Information is strictly necessary for the purpose as set out above;
- the Bidder and Relevant Persons keeping all materials containing Confidential Information in a secure place and returning them to the Department immediately on termination of the discussions relating to this Procurement or upon the request of the Department; and
- the Bidder undertaking to indemnify and keep the Department and Minister at all times fully indemnified from and against any loss, actions, proceedings, claims, demands, costs, (including, without prejudice to the generality of this provision, legal costs of the Department), awards and damages howsoever arising directly or indirectly as a result of any breach or non-performance by the Bidder or any Relevant Persons of any of the obligations in this PIM.

In the event that the Bidder is unable to comply with the foregoing, the Bidder must notify the Department immediately following receipt of the PIM and, in the event of any inability by the Bidder and the Department to agree confidentiality terms, the Department shall be entitled to require the Bidder to withdraw from this Procurement.

This provision shall not apply to any Confidential Information received by the Bidder from the Department: (a) which is or becomes public knowledge (otherwise than by a breach of this provision); or (b) which was in the possession of the Bidder, without restriction on its disclosure, before receiving it from the Department; or (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (d) is independently developed without access to the Confidential Information.

The Department may require the Bidders to enter into further confidentiality undertakings from time to time during the Procurement.

Nothing in the Pre-Qualification Documents or the disclosures envisaged by the Contract shall (except as expressly agreed otherwise) operate to transfer or operate as a grant of any licences, to any intellectual property rights in the Confidential Information.

The Bidder acknowledges that damages alone would not be an adequate remedy for breach of confidentiality. Accordingly the Department shall be entitled, without proof of special damages, to seek an injunction or other interim.

The Department may exclude a Bidder from this Procurement for the Bidder's failure to comply with this section, in addition to any other remedies to may have.

13.15 Freedom of Information

The Department is subject to the Freedom of Information Act 2014. Unless an exemption provided for under the Freedom of Information Act is applicable in relation to any particular information, the Department will disclose that information in response to a request made under the Freedom of Information Act 2014. Bidders should note that this can include price information.

The Department is not liable or responsible under any circumstances whatever for any loss, damage or suffering of any kind suffered as a result of the disclosure of any information in good faith purportedly pursuant to the Freedom of Information Act 2014 before, during or after this Procurement.

Bidders are asked to consider if any of the information supplied in the course of this Procurement should not be disclosed because of its sensitivity.

Bidders must complete the "Freedom of Information Statement" contained in the PQQ identifying which information is considered commercially sensitive, specify the reasons for its sensitivity and specify the period for which the information will remain sensitive. The Department will endeavour to consult with a concerned Bidder about sensitive information before making a decision on any Freedom of Information requests received.



The final decision on any Freedom of Information request rests with the Department, subject to applicable law. Bidders should seek their own legal advice on the application of freedom of information legislation.

The Department will take into account statements of confidentiality and commercial sensitivity that are provided by Bidders and will endeavour to consult with Bidders about sensitive information before making a decision on any Freedom of Information request received but the Department will make its own assessment and decision on these issues.

13.16 Copyright

Bidders are reminded that the copyright in the Procurement documentation and any other materials supplied by the Department and/or its advisers during this Procurement, in whatever format, belongs to the Department and its appointed advisers. Such documentation and materials may not either in whole or in part be copied, reproduced, distributed or otherwise made available to any other third party or used without the prior written consent of the Department except in relation to the preparation of a Response and /or subsequent Solutions and/or Final Tenders in the Procurement. All documentation supplied by the Department in relation to this Procurement must be returned on demand, without any copies being retained by the Bidder.

13.17 Disqualification

A Bidder that contravenes any of the terms and conditions set out in the Pre-Qualification Documents may, at the sole discretion of the Department, be disqualified and prohibited from any further participation in the Procurement. The disqualification of a Bidder will not prejudice any other civil or legal remedies available to the Department and will not prejudice any criminal liability that such conduct by the Bidder may attract.

13.18 Publicity

No publicity in relation to the Project, the selection of the long or short list of Bidders, the appointment of the Preferred Bidder, the Lots being tendered for, the award of the Contractor or the Procurement in general is permitted unless and until the Department has given express prior written consent to the relevant communication. In particular, no statements should be made to the press or other similar organisations regarding the nature of any Response, Solution or Final Tender, their contents or Lots or any solutions relating thereto without the express prior written consent of the Department.

The Department retains the right to publicise or otherwise disclose to any third party, information in relation to the Project, the selection of the long or short list of Bidders (including details of their respective Bidder Members, subcontractors, representatives, advisers, consultants, servants or agents), the Procurement in general or the award of the Contract at any time.

13.19 Solicitation

Bidders are required to undertake that whilst negotiations are continuing in respect of the Project and for a period of twelve months subsequent to the award of the Contract they will not solicit the Key Personnel with a view to offering them work or employment. The identity of the Key Personnel will be defined in the Invitation to Participate in Dialogue and any subsequent changes in the composition of the Key Personnel will be notified in writing by the Department.

13.20 Third Parties

Nothing in these terms is intended to confer any rights on any third party.

13.21 Disclaimer



This Procurement (or the Pre-Qualification Documents) should not be regarded as an investment recommendation made by the Department or its appointed advisers.

The Pre-Qualification Documents are issued by way of guidance only and do not purport to be in any way comprehensive in respect of all matters relevant to the Department's requirements in respect of the Project or to have been independently verified. All information contained within the Pre-Qualification Documents is indicative only and will be superseded by any subsequent Procurement documentation to the extent there is any conflict or inconsistency between the two.

Bidders are responsible for obtaining their own financial, taxation, legal, technical, investment and other appropriate advice, and undertaking their own due diligence, in relation to this Procurement, this document, Contract, Project, and all information provided or made available to them, at their own cost and expense.

Each Bidder must rely on its own enquiries and on the terms and conditions set out in the Contract as and when finally executed, subject to such limitations and restrictions as may be specified in such a Contract. Neither the issue of any documentation in the Procurement nor any of the information presented in it should be regarded as a commitment or representation on the part of the Department or Minister or any other person to enter into a contractual arrangement.

Although it is currently anticipated that the remainder of the Procurement will take place broadly in place in line with what is described the Pre-Qualification Documents and subsequently the ITPD, the ISDS, ISRDS and the ISFT, the Department reserves the right (subject to the requirements of public procurement law) to vary or amend the Procurement (or anything said in the Procurement documents) at any time or to terminate the Procurement by notice in writing.

Under no circumstances will the Minister, Department or its appointed advisers accept or have any liability whatever in respect of any liability, damage or loss (including, without limitation, bid costs, loss of opportunity, loss of profit or damage to reputation) suffered or incurred by a Bidder, Bidder Member or anyone else arising out of or in respect of or in connection with the Procurement, and all parts of the Procurement (including the documentation relating to the Procurement, the procedure adopted for the Procurement, the award procedure, or any variation or amendment to the procedure), even where caused due to errors in the Procurement and process or the termination of the Procurement process (in whole or in part). This paragraph operates to the fullest extent permitted by applicable law.

Neither the Minister, Department nor any of its appointed advisers will be liable or responsible for any opinion, statement, or conclusion contained in, or any omission from, the Pre-Qualification Documents or for any other written or oral communication transmitted or otherwise made available to any Bidder during the Procurement. No representation or warranty is made in respect of such statements, opinions or conclusions, and neither the Minister, Department nor its appointed advisers shall accept any liability for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of or in connection with any reliance upon such statements, opinions or conclusions. In the absence of any express written warranties or representations as provided for in the Contract neither the information in the Pre-Qualification Documents nor any other information provided by the Department or its appointed advisers shall be deemed to constitute a contract for the Project or be used in construing any such contract.

The only information that shall have any legal effect or on which any person may rely will be the information specifically and expressly represented or warranted in writing to the Contractor in the Contract, subject to its terms.

Nothing contained in the Pre-Qualification Documents or any information supplied by or on behalf of the Department during the Procurement is, or shall be relied on as, a representation of fact or promise as to the future. Any summaries or descriptions of documents or contractual arrangements set out in any part of the Pre-Qualification Documents, Invitation to Participate in Dialogue, Invitation to Submit Detailed Solution or Invitation to Submit Final Tender cannot be and are not intended to be comprehensive, nor any substitute for the underlying documentation (whether already existing or to be drafted in the future), and are in all respects qualified by reference thereto.



The Minister and Department makes no commitment to award the Contract or any contract as a result of this Procurement or otherwise, nor to accept the lowest priced or any tender. Nothing in this Procurement shall be deemed or construed to constitute a warranty or representation or contract that the Procurement will be conducted in accordance with the timetable or procedures set out in the Pre-Qualification Documents or subsequently during the Procurement

13.22 Legal obligations

The Pre-Qualification Documents do not impose or result in the imposition of any legal or contractual obligations on the part of the Department or Minister but they do confer legally enforceable rights on the Department and Minister. Legal and contractual obligations are imposed on Bidders who download or respond to the Pre-Qualification Documents and the Department reserves the right to enforce such obligations.

For the avoidance of doubt, no legal obligations on the part of the Minister will arise unless and until the Contract has been entered into with the successful Bidder and any conditions precedent to such document's effectiveness have been fulfilled. In this case, only the terms of the Contract as and when it is executed and taken effect will have any legal effect in connection with the matters to which this Procurement relates.



